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FINAL REPORT
(Part V)

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Title: The Law of Languages
in Canada
Div: II contract no 9



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PART VI

THE LANGUAGE OF INTERNATIONAL AND FEDERAL-
PROVINCIAL AGREEMENTS



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Purpose of this Study.

Many governmental activities in Canada are governed by Federal-Provincial agreements. These agreements are executive acts, rather than legislative enactments. In other words, they normally take the form of agreements entered into by the various provincial governments with the Federal government. As a result, they appear to have been entered into by the Federal departments involved on private agreements between themselves and the provincial governments, on the other hand, the consequence of this is that they are not subject to the scrutiny of any fixed rules relating to their publication. Although a number of these agreements are published in the Canada Official Gazette or in the provincial Gazette, a very considerable number are not published anywhere.¹ Since the purpose of the present chapter is to determine the legislative practices followed by these levels of government in conducting this very important sector of their legal business, this situation has compelled considerable research. For this it rendered easier our research in the various languages or languages

CHAPTER XI

FEDERAL-PROVINCIAL AGREEMENTS

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11.02 Methods of research.-

We were confronted with both the absence of any systematic publication of federal-provincial agreement and with the total absence of any organized compilations or collections of those agreements which are published. Furthermore, we discovered that some agreements are published only in part, at least when the Department has discretion and deems it advisable. In other cases, publication is required by the enabling federal or provincial legislations.¹ An illustration of the practical difficulties to which this situation can lead is to be found in our inability to locate the official texts of the Federal-Provincial Tax Agreements of 1941-42 despite the willing assistance of the Department of Finance and the staff of the Central Archives! The Department of Agriculture had to spend several months trying to locate thirteen agreements entered into with Quebec between 1912 and 1940 pursuant to the Agricultural Aid Act of 1912-1913 and the Agricultural Instruction Act of 1913. In the case of the Department of National Health and Welfare, the Departmental Solicitor wrote us on September 10, 1965 that he could not complete the questionnaire, among others for the following reason:

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" there have been numerous agreements with the Province of Quebec over the years but we have no count of them. To make an accurate tabulation would require considerable research and much time. Nor would it be possible to determine with facility which agreements are still in effect. "

It should also be noted that, while federal-provincial agreements had been widely studied by political scientists¹, jurists do not seem to have devoted their attention to them. We have been unable to find a single legal study of federal-provincial agreements. Nowhere in Ottawa, or anywhere else for that matter, is there a central registry office for such agreements. Each department charged with the administration of a federal-provincial agreement is regarded as its repository and guardian. And since, as we have seen, government departments do not always regard it as their duty to publish the agreements for which they are responsible, the only way in which we could hope to make a relatively thorough survey was to approach each and every department. A number of interviews were conducted with responsible departmental officers. This was not only a time-consuming method but in many cases the officers concerned could not provide the information

1. The most distinguished student of the field being D.V. Smiley; see D.V. Smiley, Conditional Grants And Canadian Federalism, Canadian Tax Papers No. 32, February 1963.

requested and would have to order research conducted within their own departments. It was then decided to send a detailed questionnaire to each department and to a number of federal agencies in order to seek to obtain the desired information.

11.03 The Questionnaire.-

The questionnaire was sent to all departments of the federal government and to the following five federal agencies: The Dominion Bureau of Statistics, The National Energy Board, The Atlantic Development Board, The Central Mortgage and Housing Corporation and The Atomic Energy Board. A list of the departments, indicating those which replied, is annexed to this chapter as appendix XI-A. Virtually every department and agency replied. The questionnaire itself was prepared after a number of interviews with various officers of the federal government. The following definition was adopted for the purpose of the questionnaire:

" The questions refer to those Agreements involving questions of policy and expenditure of money, which may be said to be Federal-Provincial Agreements, not minor administrative transactions which your Department may have from time to time with a Provincial Department."

The definition attempted to exclude a very large number of minor land and similar transaction which all federal departments must necessarily make in the course of their administration and for the purpose of which they must deal with provincial departments. Also, on the basis of this preliminary research, we found that in practice there were three types of federal-provincial agreements and that the questionnaire should distinguish between them. These three basic categories are:

- (1) Agreements made in virtue of special federal enabling legislation (one of the most important examples thereof being the ARDA Agreement);
- (2) Agreements made by departments under the general power given to them to conclude agreements with Provinces under approval by order-in-council;
- (3) Agreements negotiated directly and less formally by a federal department with its provincial counterpart. As appears from a copy of the questionnaire which is annexed

to this chapter as Annex XI-B, eight questions were asked. They are:

- (i) The total number of federal-provincial agreements of all three categories administered by the department or agency in question;
- (ii) Whether any agreements had been signed in French;
- (iii) Details of the language or languages of agreements signed with Quebec; (an annex to this questionnaire requested more specific information on agreements presently in force with Quebec indicating the languages of such agreements);
- (iv) Whether French translations existed of agreements with Quebec, which had been made in English;
- (v) Whether French-language agreements were drafted in French or had been drafted in English and then translated;
- (vi) What was the legal status of each text when two languages had been used and whether there existed a working language for the program to be administered under the agreement;

(vii) Whether subsidiary agreements signed pursuant to a federal-provincial agreement were signed in the same language as the basic agreement;

(viii) What major federal-provincial agreements had been made with Quebec since 1910 indicating the language thereof.

Before reviewing the replies and information gained from the questionnaire, we think it advisable to examine the manner in which federal-provincial agreements are ordinarily prepared, what the language practices are, and what role the Department of Justice plays. This will be done in 11.04 - 11.06. The information given is generally based on a series of interviews conducted with responsible officials.

11.04 Manner of preparing federal-provincial agreements.-

The minor of preparing federal-provincial agreements depends in part on the complexity and upon the importance of each agreement. A tax-sharing agreement or a major agreement on sharing welfare costs will be prepared in a more elaborate manner than an agreement dealing with the extermination of mosquitoes in Northern Ontario and Quebec. Certain of the most important agreements are prepared simultaneously with the enabling federal and provincial legislations devoted to the subject-matter of the agreement. This

was the case recently with the Canada Pension Plan agreement and with the ARDA agreement. The first two types of agreements described in 11.03 (agreements made in virtue of special federal enabling legislation and under the general power to conclude agreements approved by order-in-council) are often planned and drafted in the standing federal-provincial ministerial committees which exist now in virtually every field of administration and meet at least annually if not more frequently. The best known of these is the committee of Prime Ministers. A number of federal-provincial agreements have emanated from this committee. But most agreements originate with standing ministerial committees in which interested ministers and their departmental advisers meet to discuss matters of mutual concern. A number of agreements are also prepared at ad hoc meetings formed to deal with emergencies (e.g. agriculture) or with broad problems of finance and welfare which require considerable consultation before any joint action can be undertaken by the various governments. The process of negotiations may involve considerable bargaining and result in substantial amendments to any texts which are submitted to such committees. It appears to be usual for one of the parties, either the Federal Government or an interested provincial government to prepare the initial draft of the proposed agreement. As a rule, the initial draft is prepared by federal officials. This draft is then discussed and modified by the committee. Once agreement has been reached, the text is signed by the respective ministers who exchange it with their opposites

and then maintain authentic copies in their files.

11.05 Linguistic practices in federal-provincial agreements.-

Insofar as the languages are concerned, in which official texts of federal-provincial agreements are drawn up, there is at least one universal rule, namely, that all agreements with common law provinces are negotiated, drawn up and signed in the English language only. With respect to Quebec, however, the practice varies considerably, not only from department to department, but within departments themselves. Some agreements exist in equally authentic French and English versions; other agreements exist in both languages but with one language having priority in the event of conflict; other agreements with Quebec are in English or in French only, with the translation in the other language; still other agreements are unilingual and have no translation. It should be noted, that the same variations appear to exist in inter-provincial agreements signed by Quebec with other provinces. At least one department reported that the French text of agreements which were drawn up in both French and English, was referred to its opposite in Quebec for a full textual consideration.¹ In fact, the policies relating to the language of official agreements with Quebec vary enormously, as will be noted from the analysis made hereinafter of the replies to the questionnaire. Some departments prefer to have their agree-

1. Interview with Mr. R. McCuish, Assistant Director of the Technical and Vocational Assistance Division of the Department of Labour, July 1, 1965.

ments in French only, in order to avoid any possible textual conflicts. Other departments insist on doing all their business in English. As for those departments which prepare agreements in both languages, they indicated that negotiations were not seriously complicated by the necessity of discussing the two versions of the text.

11.06 The role of the Department of Justice.-

While, as we have seen in 3.22 the Department of Justice is attempting to participate increasingly in the preparation of subordinate legislation, this is not the case insofar as federal-provincial agreements are concerned. There does not seem to be any set role for the Department of Justice. The Department itself prefers to view itself as playing the traditional role of "the government's law firm", and although it is willing to provide "consultation" as to the form of proposed agreements, it has not attempted to establish any form of control nor to maintain a central registry of agreements in force. The role of the Department of Justice can vary thus from actually drafting the complete agreement to complete exclusion from the drafting negotiations and enforcement of such agreements. According to an officer of the Department whom we interviewed ¹, the important factor in determining whether the Department will participate in the preparation of any

1. Interview with Mr. L.E. Smith, Officer of the Department of Justice, specially charged with business relating to federal-provincial agreements, on the 23rd of August, 1965.

given agreement, is whether the legal work of the department involved is done by an officer of the Department of Justice seconded to that department, or whether the legal work is done entirely by a legal officer of that department. Officers seconded to other departments will generally refer proposed agreements back to the Department of Justice for information and for comments. Also, a number of departments prefer to refer drafts to the Department of Justice, either as a matter of course, or for advice on issues beyond the technical competence of departmental officers. In practice, according to the same officer, the most important agreements are brought to the attention of the Department of Justice in one way or another. But it should be stressed that there is no firm procedure. When the Department of Justice is involved in the drafting of a federal-provincial agreement, at least according to the officer interviewed, two factors are considered: (a) the language in which the agreement is intended to be signed and (b) the language in which the drafting officer is most competent. The legal officer drafting the agreement may do so in either English or French. If he is preparing an agreement to be signed with common law provinces, the agreement will almost certainly be prepared in English. Agreements with the Province of Quebec, which are to be signed in both languages, are prepared in English and French before negotiations begin and both texts

are subject of the negotiations. However, unless the drafting officer is competent in French, the agreement is first drafted in English, and then the French translation is made.¹

11.07 Analysis of replies to questionnaire.-

A statistical analysis of the replies to the questionnaire will be found in appendix XI-C. In this connection, it should be noted that since all federal-provincial agreements involving common law provinces are signed in English only, the significance of appendix XI-C and of the following paragraphs is centered on agreements involving the Province of Quebec. A detailed analysis of the replies of each department and of the various government agencies is to be found in the following paragraphs.

11.08 Federal Agencies.-

Of the five federal agencies questioned, only the Dominion Bureau of Statistics had signed agreements with the Province of Quebec. The Bureau indicated that it had entered into two such agreements which existed in both English and French versions having equal authenticity. The agreements prepared by the Bureau were sometimes drafted in French and sometimes drafted in English.

1. According to the Deputy Minister of Justice, 12 of the 60 officers in the Department of Justice are from Quebec, but these are mainly engaged in problems of the Civil Law Division, and not in those divisions which do drafting work; according to a calculation made in chapter IVb, 22% of the legal officers in the various Departments of the Federal Government are to be considered bilingual, although not all of these officers would be competent to draft a legal document in French.

11.09 Department of Agriculture.-

The Department of Agriculture indicated that it had signed agreements in all three major categories and that it was the custom of the department to sign certain agreements with Quebec in French. Only a limited number of the Department's agreements were made with Quebec, and these existed in French only. They were always drafted in English and then translated into French. The reply indicated that in the event of conflict the French version would prevail over the English. Both the reply to the questionnaire and an interview with an officer of the Department ¹ indicated that until recent years it had been the practice of the Department to sign agreements with Quebec in English only.² However, in the last five years there has been a change of attitude and agreements with Quebec are signed in French. We draw the following significant comment from the Departments' reply to our questionnaire:

" The Department of Agriculture administers a number of its policies in agreement with the province or provinces concerned. Except as indicated in the questionnaire the agreement takes the form of an exchange of correspondence, usually between Deputy Ministers. In recent years it is the practice of the Department of Agriculture to correspond with the Quebec Deputy Minister of Agriculture in the French language unless it is believed there could be some mis-interpretation of what is intended."

1. Interview with Mr. J.S.Parker, Director of Administration of the Department of Agriculture, 23rd of June, 1965.
2. In a letter, dated Nov.4,1965, from Mr. J. S. Parker, Director-General, supplementing the department's reply to the questionnaire, it was stated that all thirteen agreements signed with Quebec between 1912 and 1940 were in English.

11.10 Department of Citizenship and Immigration.-

(A) Canadian Citizenship Branch.- This division of the Department indicated that it has had no agreement with the Province of Quebec.

(B) Immigration Branch.- This Branch of the Department indicated that it had two minor agreements with the Province of Quebec, one in French and one in English. It was stated that these agreements were drafted in English and then translated into French, and that whenever agreements existed in two languages the English version would take precedence over the French version in the event of conflict.

11.11 Department of External Affairs.-

The Department stated that it administered two agreements, none of which were with Quebec. Somewhat contradictorily it stated that its agreements were sometimes drafted in French and sometimes in English. It added that if agreements existed in both languages, they would not be of equal value without indicating which one would have precedence. On the whole the reply of the Department was not very illuminating.

11.12 Department of Fisheries.-

The Department of Fisheries indicated that it had one major agreement with Quebec resulting from enabling legislation whose official text was in English only and of which there existed no official translation. Another, less formal, agreement had been

negotiated with Quebec and existed in both French and English versions. The agreements made by the Department of Fisheries are always drafted in English. In reply to question 8, the department stated that in 1943 it had entered into an agreement with Quebec which was drafted in both French and English. But agreements made in 1951 and 1960 were both in English only.

11.13 Department of Forestry.-

This Department disclosed that it had one major agreement with Quebec which had been signed in virtue of enabling legislation and whose official text was in both English and French. The agreement had been drafted in English only and then translated. Insofar as the ARDA agreement is concerned, both English and French versions are deemed to be of equal validity. The department states: " If a conflict should arise in the case of the ARDA agreement with Quebec, the Department would probably be prepared to regard the French version as binding." In reply to question 8 it was stated that agreements made in 1960-61 and in early 1962, namely the Federal-Provincial Forestry Agreement, and Forest Fire agreement were signed in English only, and when renewed in 1964, the Composite Forestry Agreement was signed in English only. Commenting on the replies, the department stated:

" The current Composite Federal-Provincial Forestry Agreement has not been executed with Quebec, pending the re-drafting of the terms of the Agreement in accordance with the

"Established Programs (Interim Arrangements) Act". It is expected, however, that official texts in both French and English will be signed with Quebec. It is also expected that an Agreement Respecting an Aerial Spraying Operation Against the Jack Pine Sawfly in Quebec will shortly be executed in both languages.

"A working French translation was made of the 1964 Federal-Provincial Forestry Agreement, which terminated on March 31, 1965. The English text was regarded as the governing one."

11.14 Department of Mines and Technical Surveys.-

This department disclosed that it had one agreement negotiated directly by the Department with Quebec: this agreement is in French only. However, the Department admitted that it had been drafted in English and then translated into French so that the official text is merely a translation. The previous agreement signed in 1962 was also signed in French only.

11.15 Department of Finance.-

This Department administers 20 federal -provincial agreements. Of these only two are with Quebec and are in both languages although they were drafted in English and then translated. Both the French and English texts are deemed to be of equal validity and no provision is made in the agreements for conflicts nor to specify a working language for administrative purposes. In commenting on its reply the Department stated that it expected shortly to have an additional nine agreements with Quebec under the Established Programs (Interim Arrangements) Act.

These agreements are in effect "contracting out" arrangements with Quebec with respect to certain shared-cost programmes.

The Department then added:

"Whereas, in the past, our agreements with Quebec were made in both languages, they nevertheless took the form of 2 separate documents, both of which were signed by both parties, and both of which had the status of official texts. Starting with the agreements under the Established Programmes Act, we are signing only one piece of paper containing French and English columns. It is hoped to extend the application of this bilingual form to many future agreements."

11.16 Department of National Health and Welfare.-

This Department felt unable to complete the questionnaire. Mr. Claude Dubuc, Departmental Solicitor, in a letter to the commission dated September 10, 1965, explained this as follows:

" there have been numerous agreements with the Province of Quebec over the years but we have no count of them. To make an accurate tabulation would require considerable research and much time. Nor would it be possible to determine with facility which agreements are still in effect."

The letter then stated:

" .. the practice generally has been to prepare the agreements in English and then to prepare translations into French in order that the final execution can be in both languages which has been the case in many instances. Occasionally, where it appears expedient to do so, French translations have been prepared for the use of representatives of the Quebec Government during the discussion or

negotiation stage. In only one instance, in our recollection, has an agreement with Quebec been drafted originally in French and then translated into English. In that case it was a composite document in which Canada contracted with the Quebec Winter Sports Corporation and the Quebec Government contracted with the same Corporation, all in the same document. This is under the Fitness and Amateur Sport Act. In that case, both the English and French versions were signed as originals.

In the later agreements with Quebec under the Established Programs (Interim Arrangements) Act, texts were prepared in English and French and they recited that the agreements were made in duplicate in both languages. Quebec has requested that only the French copy be signed but it is intended to ask Quebec whether it would be agreeable to signing a document drafted in both languages, with the French and English versions appearing on the left and right sides of the pages in the manner in which the Quebec Statutes are published. This suggestion, made by the Legal Adviser to this Department, is felt to be a step forward and preferable to having separate documents signed in English and French."

Worthy of note is the intention of the department to follow the abovementioned example of the Department of Finance to have all agreements with Quebec drafted in both languages, the French and English text being printed side by side as is the case with Quebec statutes. This practice facilitates interpretation greatly.

11.17 Department of National Revenue.-

The Taxation Division of the Department of National Revenue advised us that it had at present no agreement in force with the Province of Quebec.

11.18 Department of Northern Affairs and National Resources.-

(A) Natural and Historic Resources Branch.- This Branch of the Northern Affairs Department has one agreement negotiated directly with the Province of Quebec. This agreement is in both French and English. It was first drafted in English and then translated into French, but both texts are of equal validity.

(B) Northern Administration Branch.- This Branch of the Department has made one agreement with Quebec under a special federal enabling legislation; the official text of this agreement is in French only. Interestingly enough, even this single text was first drafted in English and then translated. In other words, the official text is a mere translation of an unofficial English original!

11.19 Department of Public Works.- The Department has one agreement with Quebec made under special federal enabling legislation. It has also entered into two agreements with Quebec approved by order-in-council and one negotiated directly by the Department. The first agreement was signed officially in both English and French. The three others are in English only. In reply to the fourth question of the questionnaire dealing with the existence of working translations of English texts, it was stated that such translations existed only for agreements approved by order-in-council, but not for other types of agreements.

In replying to question 5, the Department stated that agreements prepared under special enabling legislation were sometimes drafted in French and sometimes drafted in English. All other types of agreements were drafted in English and then translated. When texts exist officially in two languages, both versions are of equal validity. The Department added, somewhat prudently, that any conflict between the two versions would be dumped into the lap of the Department of Justice. The Department also disclosed that it was its policy to correspond in French with the Province of Quebec. In reply to the historical question, it stated that agreements made in 1958, 1960 and 1961 were signed in both languages but that an earlier agreement made in 1938 had been signed only in English.

11.20 Department of National Defence. -

The Department advised the Commission that after a review prepared by the Judge Advocate General it had come to the conclusion that it had never entered into federal-provincial agreements of the type contemplated by the questionnaire.

11.21 Department of Trade and Commerce. -

This Department has two agreements negotiated directly with Quebec, one of them exclusively in English and the other one in both languages. Where necessary French translations are made of English texts. Both these agreements, however, were

drafted in English. Where two versions exist, they are deemed to be of equal validity.

11.22 Department of Transport.-

The Department of Transport stated that it had 34 agreements with the Province of Quebec, all of them approved by order-in-council. Of these 34 agreements, 12 were in French only and the remaining 22 were in English. Where necessary translations were available. All 12 French agreements were originately drafted in English and then translated into French. Since the Department has no agreements signed in both languages, textual conflicts have never arisen. The Department stated that it avoided signing agreements in both languages and that if the original was drafted in French it became the official text.

11.23 Department of Veterans Affairs.-

The Department has two agreements with Quebec, both approved by order-in-council. They are in French only. As for the drafting of agreements the Department stated that its practice varied and that sometimes French and sometimes English was used in the original draft. The Department also indicated that it had signed two agreements with Quebec in the past - in 1921 and 1942 - and that both were in French only.

11.24 General statistical review of replies.-

The replies received are tabulated in appendix 11-C.

The tabulation covers replies from fifteen departments and six agencies. A number of other departments and agencies replied that they did not make federal-provincial agreements.

Out of the 21 replying, 10 departments and one agency stated that they had presently in force agreements with Quebec. The specific replies can be summarized as follows:

a) QUESTION 1:

Types of agreements in force.- One agency and nine departments stated that they had federal-provincial agreements made pursuant to special enabling legislation. Ten departments had made agreements pursuant to authorization by order - in -council. Eight departments had made agreements by direct negotiation with provincial departments. Two departments had entered into minor agreements with the provinces.

b) QUESTION 2:

Provinces with which French agreements made.- The Dominion Bureau of Statistics and the ten departments replying all stated that the only province with which they sign federal -provincial agreements in the French language was Quebec.

c) QUESTION 3:

Language used in signing agreements with Quebec.- In reply to this question, the Dominion Bureau of Statistics

stated that both its agreements with Quebec were signed officially in both English and French versions. In connection with agreements passed under special federal enabling legislation, three departments stated that their agreements were in both languages, while one had agreements only in English and another only in French. Insofar as agreements approved by order-in-council are concerned, one department only had agreements in both languages; two departments had agreements in French only and one department signed agreements in either French or English, avoiding bilingual texts. As for the third category, two departments declared that their agreements when in both languages; one that it used English only; another one that they had all been in French, and the third department stated that its agreements were either in French only or in English only. One department also commented that subsidiary agreements negotiated directly with Quebec were signed either in English only or in French only.

d) QUESTION 4:

Availability of French translations.- With respect to agreements made pursuant to special enabling legislation, one department stated that translations were

always available and another that they were not available. Two departments did not reply. Relating to agreements approved by order-in-council, one department stated that translations were always available and another that they were available sometimes only. In connection with the agreements negotiated directly with Quebec, one department had such translations, another one had them only sometimes and the third one had none at all.

e) QUESTION 5:

Language of original draft.- In reply to this question the Dominion Bureau of Statistics stated that agreements which needed an official French version were sometimes drafted in English and sometimes in French. With respect to agreements to agreements made under enabling legislation, of five departments replying, four stated that the draft was always in English, and one that the practice varied. Out of six departments replying to the question dealing with agreements made by order-in-council, five drafted the original version in English and one sometimes in English and sometimes in French. The same answers were given by six departments

replying to the question above. Two departments also added that all subsidiary agreements were always drafted in English. It would appear that whenever the official text of a federal-provincial agreement is either bilingual or even in French only, the original draft of the agreement is almost inevitably in English and the French version is only a translation.

f) QUESTION 6:

Validity in textual conflicts.- The Dominion Bureau of Statistics stated that it presumed that all their English and French versions were of equal validity but that they had never run into a conflict. None of the agreements entered into by the Bureau contained provisions dealing with the language of implementation of the agreements. Seven departments stated that their French and English texts were of equal validity when such bilingual texts existed. However, this is not borne out by their replies to the next subsidiary question dealing with conflicts between the two texts. Two departments stated that they would refer to the French version; one that it would

refer to the original text (which, as we have seen, is almost always in English) and four departments stated that the problem had never arisen and that they did not know what they would do. One department said that it would refer the conflict to the Department of Justice. All the departments replied that their agreements contained no provisions relating to the language in which the program set up under the agreement was to be implemented.

g) QUESTION 7:

Modifications of agreements.- All those replying to this question stated that in preparing a modifying agreement to a major federal-provincial agreement already signed, the same languages would be used in the official text or texts as in the original agreements.

h) QUESTION 8:

Historical survey.- Since question 8 does not seem to have been answered with the thoroughness desired, the replies have not been tabulated and no extensive conclusions may be drawn from the replies received. One impression derived from perusal of these replies is that more agreements are being

signed with Quebec in French, or at least in both French and English, than was the case over 10 years ago. It should also be added that during the course of interviews conducted in a number of departments, each department expressed complete willingness to sign agreements with Quebec in French only, which, in many cases, means a change from the existing practice.

11.25 Conclusions.-

The conclusions to be drawn from our study are self-evident. In practice the original drafts of all federal-provincial agreements, no matter what their ultimate language, are in English only. Secondly, when French is used, either alone, or in bilingual texts, it is only with the Province of Quebec. The other nine provinces never have signed a French text of federal-provincial agreements. In other words, it would appear that some federal-provincial agreements are signed by some provinces in one language and by Quebec in another language or both languages¹. This situation could give rise to a variety of conflicts. What would happen in the event of a disparity between the English text signed by the common law provinces and the French text signed by Quebec? Could an English-speaking province invoke the more favourable French version which it had not signed but which Quebec had ? Or, con-

1. e.g. cf. reply of Department of National Health and Welfare quoted in 11.16.

versely, could the Federal Government oppose to Quebec the English text which the other provinces had signed or which Quebec had signed but together with a French version ? While the problem does not appear to have arisen yet, it could easily occur. From a point of view of juridical consistency , it would be better if all provinces signed in the same language or signed both versions when there is a bilingual text. On the other hand, it must be borne in mind that this could present practical difficulties for English-speaking provinces if their legal and technical advisers do not understand French.

ANNEX XI-A

List of Departments which replied to the questionnaire
on Federal - Provincial Agreements.

AGENCIES:

Abbreviation used:

The Dominion Bureau of Statistics	D.B.S.
The National Energy Board	N.E.B.
The Atlantic Development Board	A.D.B.
The Central Mortgage and Housing Corporation	C.M. & H.
The Atomic Energy Control Board	A.E.
Royal Canadian Mounted Police	R.C.M.P.

DEPARTMENTS:

Department of Agriculture	Agric.
Department of Citizenship and Immigration	Cit. & Im.
(A) Canadian Citizenship Branch	Cit.
(B) Immigration Branch	Im.
(C) Indian Affairs	Indian
Department of External Affairs	Ext.
Department of Fisheries	Fish.
Department of Forestry	Forest
Department of Mines and Technical Surveys	Mines
Department of Finance	Fin.
Department of National Health and Welfare	Health

Department of National Revenue	Nat.Rev.
Department of Northern Affairs and National Resources.	North Aff.
(A) Natural and Historic Resources Branch	Nat.Res.
(B) Northern Administration Branch	North
Department of Public Works	P.Works
Department of National Defence	Defence
Department of Trade and Commerce	T & C
Department of Transport	Transp.
Department of Veterans Affairs	D.V.A.

ANNEX XI-B

QUESTIONNAIRE

RE: FEDERAL - PROVINCIAL AGREEMENTS

1.- How many federal-provincial agreements of the following types are presently in force and administered by your department?

(A) Agreements made by virtue of special federal enabling legislation?

NUMBER: _____

(B) Agreements made by virtue of the power given to your Department to conclude agreements with the provinces with approval by order-in-council?

NUMBER: _____

(C) Agreements made by direct negotiation between your Department and provincial departments?

NUMBER: _____

(D) Other?

NUMBER: _____

2.- Please state the Provinces with which your Department signs the French-language version of agreements as official texts.

3.- Of the agreements of each type presently in force how many are signed by Quebec in French only, in English only, and in both English and French?

(A) Agreements which involve special federal enabling legislation?

Official text in French only NUMBER: _____

Official text in English only NUMBER: _____

Official texts in both languages NUMBER: _____

Total in which Quebec is a party _____

(B) Agreements approved by order-in-council?

Official text in French only NUMBER: _____

Official text in English only NUMBER: _____

Official texts in both languages NUMBER: _____

Total in which Quebec is a party _____

(C) Agreements negotiated directly by your department?

Official text in French only NUMBER: _____

Official text in English only NUMBER: _____

Official texts in both languages NUMBER: _____

Total in which Quebec is a party _____

(D) Other?

Official text in French only NUMBER: _____

Official text in English only NUMBER: _____

Official text in both languages NUMBER: _____

Total in which Quebec is a party _____

(SEE ANNEX)

4.- Are working translations available for current agreements with Quebec where no official text is available in French?

(A) Agreements which involve special federal enabling legislation?

_____ Yes - in all cases

_____ Yes - in some cases but not others

_____ No - in no cases

_____ Not applicable: all agreements of this type have official text in French

_____ Not applicable: no agreements of this type with Quebec a party

(B) Agreements approved by order-in-council?

_____ Yes - in all cases

_____ Yes - in some cases but not others

_____ No - in no cases

_____ Not applicable: all agreements of this type have official text in French

_____ Not applicable: no agreements of this type with Quebec a party.

(C) Agreements negotiated directly by our department?

- ☐ Yes - in all cases
- ☐ Yes - in some cases but not others
- ☐ No - in no cases
- ☐ Not applicable: all agreements of this type have official text in French
- ☐ Not applicable: no agreements of this type with Quebec a party.

(D) Other

- ☐ Yes - in all cases
- ☐ Yes - in some cases but not others
- ☐ No - in no cases
- ☐ Not applicable: all agreements of this type have official text in French
- ☐ Not applicable: no agreements of this type with Quebec a party

5.- In cases where official texts are to be signed in French, is it your usual practice to draft the text in French, or to draft it in English and then have it translated?

(A) Agreements which involve special federal enabling legislation?

- ☐ Always drafted in French

_____ Sometimes drafted in French, sometimes
in English and translated

_____ Always drafted in English and translated

_____ Not applicable: no case of this type where
official texts are signed in French

(B) Agreements approved by order-in-council?

_____ Always drafted in French

_____ Sometimes drafted in French, sometimes in
English and translated

_____ Always drafted in English and translated

_____ Not applicable: no cases of this type
where official texts are signed in French

(C) Agreements negotiated directly by your department?

_____ Always drafted in French

_____ Sometimes drafted in French, sometimes in
English and translated

_____ Always drafted in English and translated

_____ Not applicable: no cases of this type where
official texts are signed in French.

(D) Other

_____ Always drafted in French

_____ Sometimes drafted in French, sometimes in
English and translated

_____ Always drafted in English and translated

_____ Not applicable: no cases of this type where
official texts are signed in French

- 6.a) If there is both an English and a French text of an agreement are they of equal validity?
(Please cite governing provisions if any.)
- 6.b) In the event of conflict between the English and French texts how is the conflict resolved? (Please cite governing provisions if any.)
- 6.c) In the agreements made by your Department, is it specified what working language or languages are to be used in the administration of the program?
If so, please cite governing provisions.

7.- When Agreements are made modifying and complementing the basic Agreement, is the language of the basic text always used in the modifying agreements, ie. if the basic agreement is signed in French and English will the modifying agreements always be in French and English?

Yes _____

No _____

If "no" please state in which Agreements the practice varies.

8.- This question is purely historical, and does not refer to agreements presently in force.

In the space below, please list all major federal-provincial agreements in which Quebec has been a party and in which your department has been involved, between 1910 and the present.

Please enter the title of each major agreement, the year in which it was signed, and the language of the text which was signed by Quebec.

TITLE OF AGREEMENT	DATE AND REFERENCE	LANGUAGE OF TEXT SIGNED BY QUEBEC		
		French	English	Both Languages
1.-				
2.-				
3.-				
4.-				
5.-				
6.-				
7.-				
8.-				
9.-				
10.-				
11.-				

Annex to Question 3

Please list the Agreements of the three types which are presently in force and administered by your Department which are signed by Quebec in French only, in English only, in French and English. (If the Agreements of any category are too numerous to list, a general description will suffice.)

TITLE OF AGREEMENT	DATE AND REFERENCE	LANGUAGE OF TEXT SIGNED BY QUEBEC		
		French only	English only	French & English
<u>A. Agreements which involve special enabling legislation.</u>				
<u>B. Agreements approved by order-in-council.</u>				
<u>C. Agreements negotiated directly by your Department.</u>				

COMMENTS

ANNEX XI-

Statistical summary of replies to questionnaire

Question No.1

Number of federal-provincial agreements in force and administered by the departments.

A: in virtue of special federal enabling legislation;

B: approval by order-in-council;

C: direct negotiations with provincial departments;

D: other;

Agencies & Dept.:	A:	B:	C:	D:	Total:
-------------------	----	----	----	----	--------

AGENCIES:

D.B.S.	-	-	2(Que.)	-	2
C.M.& H.	589	-	-	-	589
A.E.	-	-	2	-	2
R.C.M.P.	-	9	61	-	70
Subtotals:	589	9	65	-	663

DEPARTMENTS:

Agric.	3	21	25	-	49
Cit.	-	2	-	-	2
Im.	-	8	13	12	33
Indian	3	20	-	-	23
Ext.	2	-	-	-	2
Fish.	5	-	7	-	12

cont'd

-2-

<u>Agencies & Dept.:</u>	<u>A:</u>	<u>B:</u>	<u>C:</u>	<u>D:</u>	<u>Total:</u>
Forest.	3	4	-	-	7
Mines	-	-	7	-	7
Fin.	20	-	-	-	20
Nat.Rev.	9	-	-	-	9
Nat.Res.	-	-	1	-	1
North	2	1	-	-	3
P.Works	11	3	1	-	15
T & C	-	-	2	-	2
Transport	-	34	-	-	34
D.V.A.	-	22	-	1	23
Subtotals of Departments:	58	115	56	13	242
Grand totals:	647	124	121	13	905

Question No.2

Provinces with which French language
versions of agreements exist.

Agencies & Dept.:

Province:

AGENCIES:

D.B.S.	Quebec
R.C.M.P.	None

DEPARTMENTS:

Agric.	Quebec
Im.	Quebec
Ext.	N/A
Fish.	None
Forest.	Quebec
Mines	Quebec
Fin.	Quebec
Nat.Res.	N/A
North.	Quebec
P.Works	Quebec
T & C	Quebec
Transport	Quebec
D.V.A.	Quebec

Question No.3Language of Agreements signed by Quebec.

The following abbreviations have been used:

E: English only

F: French only

E & F: Versions in both English and French

A: Agreements pursuant to special federal enabling legislation

B: Agreements approved by order-in-council

C: Agreements negotiated directly with Quebec departments

D: Others

The numbers between brackets after the language indication refer to the number of agreements signed in the particular language or languages.

Agencies & Dept.: A: B: C: D:

AGENCIES:

D.B.S.	-	-	E&F(2)	-
--------	---	---	--------	---

DEPARTMENTS:

Agric.	-	F(2)	-	-
--------	---	------	---	---

Im.	-	-	-	E&F(1)
-----	---	---	---	--------

Ext.	N/A	-	-	-
------	-----	---	---	---

Fish.	E(1)	-	E&F(1)	-
-------	------	---	--------	---

Forest.	E&F(1)	-	-	-
---------	--------	---	---	---

<u>Agencies & Dept.:</u>	<u>A:</u>	<u>B:</u>	<u>C:</u>	<u>D:</u>
Mines	-	-	F(1)	-
Fin.	E&F(2)	-	-	-
Nat.Res.	-	-	E&F(1)	-
North.	F(1)	-	-	-
P.Works	E&F(1)	E&F(2)	E(2)	-
T&C	-	-	E&F(1) E(1)	-
Transp.	-	F(12) E(22)	-	-
D.V.A.	-	F(2)	-	-

Totals:

E: 26
F: 18
E&F: 12

Question No.4

Availability of working translation when
no official French text exists.

The following abbreviations have been used:

A: Agreements pursuant to special federal enabling legislation

B: Agreements approved by order-in-council

C: Agreements negotiated directly with Quebec departments

D: Others

Agencies & Dept.: A: B: C: D:

AGENCIES:

D.B.S.	-		N/A all in F.	-
--------	---	--	---------------	---

DEPARTMENTS:

Agric.	-	All in F.	-	-
--------	---	-----------	---	---

Cit.	-	-	-	- (ans. "yes" given)
------	---	---	---	-------------------------

Im.	N/A none w.Que.	N/A none w.Que.	N/A none w.Que.	No
-----	--------------------	--------------------	--------------------	----

Ext.	N/A	-	-	-
------	-----	---	---	---

Fish.	no	-	N/A all in F.	-
-------	----	---	---------------	---

Forest.	N/A all in F.	N/A none w.Que.	N/A none w.Que.	N/A none w.Que.
---------	------------------	--------------------	--------------------	--------------------

Mines	-	-	N/A all in F.	-
-------	---	---	------------------	---

Fin.	N/A all in F.	-	-	-
------	------------------	---	---	---

<u>Agencies & Dept.:</u>	<u>A:</u>	<u>B:</u>	<u>C:</u>	<u>D:</u>
Nat.Res.	-	-	Yes	-
North.	N/A all in F.	-	-	-
P.Works	always	always	no	-
T&C	-	-	sometimes	-
Transp.	-	sometimes	-	-
D.V.A.	-	N/A all in F.	-	-

Question No. 5

Language of original draft of official
French text.

The following abbreviations have been used:

A: Agreements pursuant to special federal enabling legislation

B: Agreements approved by order-in-council

C: Agreements negotiated directly with Quebec departments

D: Others

Agencies & Dept.:	A:	B:	C:	D:
-------------------	----	----	----	----

AGENCIES:

D.B.S.	-	-	sometimes & transl.	-
--------	---	---	------------------------	---

DEPARTMENTS:

Agric.	always E.	always E.	-	-
Cit.	always E.	always E.	always E.	always E.
Im.	-	-	-	always E.
Ext.	sometimes F.or E. & translated	-	-	-
Fish.	-	-	always E.	-
Forest.	always E.	always E.	-	-
Mines	-	-	always E.	-
Finance	always E.	-	-	-
Nat.Res.	-	-	always E.	-
North	always E.	-	-	-

<u>Agencies & Dept.:</u>	<u>A:</u>	<u>B:</u>	<u>C:</u>	<u>D:</u>
P.Works	sometimes & transl.	always E.	sometimes & transl.	-
T&C	-	-	always E.	-
Transp.	-	always E.	-	-
D.V.A.	-	sometimes F. & transl.	-	-

Question No.6

- a) Are French and English texts of equal validity?
- b) Solution of conflicts;
- c) Working language of administration of Joint Program;

The following abbreviations have been used:

- A: Agreements pursuant to special federal enabling legislation
- B: Agreements approved by order-in-council
- C: Agreements negotiated directly with Quebec departments
- D: Others

Agencies & Dept.: A: _____ B: _____ C: _____

AGENCIES:

D.B.S.	presumably	none	no
C.M.& H.	N/A	N/A	all in Eng.
A.E.	N/A	N/A	no

DEPARTMENTS:

Agric.	Yes	Priority of F.	no
Cit.	N/A	N/A	no
Im.	yes	orig.text takes priority over transl.	no
Indian	N/A	N/A	no
Ext.	no	N/A	no
Fish.	N/A	N/A	-
Forestry	yes for ARDA;forest. agreemts (see comments)	F.version (see comments)	no

<u>Agencies & Dept.</u>	<u>A:</u>	<u>B:</u>	<u>C:</u>
Industry	N/A	N/A	N/A
Mines	N/A	N/A	no
Fin.	yes	nil	nil
Nat.Rev.	N/A	N/A	no
Nat.Res.	yes	never arisen	no
North	yes	never arisen	no
P.Works	yes	Ref.to Dept.of Justice	no(see comments)
T&C	yes	no conflicts arisen	no
Transp.	agreemts. in one lang.only	no conflicts	no
D.V.A.	N/A	N/A	no

Question No.7

Language of agreements modifying federal-
provincial agreements.

Agencies & Dept.

AGENCIES:

D.B.S.

C.M.& H.

A.E.

DEPARTMENTS:

Agric.

Cit.

Im.

Indian

Ext.

Fish.

Forest.

Mines

Fin.

Nat.Rev.

Nat.Res.

North.

P.Works

T&C

Transp.

D.V.A.

Answers:

No modifications made

No answer given

N/A

Yes

Yes

Yes

N/A

Yes

Yes

Yes

Yes

Yes

N/A

Yes

Yes

Yes

Yes

Yes

Yes

CHAPTER XII

LINGUISTIC PRACTICES IN CANADIAN INTERNATIONAL
AGREEMENTS AND DIPLOMATIC EXCHANGES

A - INTRODUCTION

12.01 Forms of international agreements.-

Lord McNair has defined¹ a treaty as: "A written agreement by which two or more states or international organizations create or intent to create a relation between themselves operating within the sphere of International Law." In fact, there are many forms of international agreements. The term "treaty" is often loosely applied to international agreements although such agreements can be signed in a plethora of forms and bear many names. For instance, the word "convention" generally refers to a multilateral agreement; a "declaration" generally means a statement of existing law; a "protocol" generally amends or supplements a treaty; the word "act" has been used to describe the establishment of a multilateral regime for a defined area; the words "final act" may be used to sum up the proceedings of an international conference; a "general act" is an instrument which enumerates several treaties; an "exchange of notes" is used for a great variety of less important agreements; other words which are sometimes used to describe international agreements

1. In The Law of Treaties, Oxford, 1961, p. 4.

are: "accords", "additional article", "arrangement", "venant", "compromis", "lettres reversailles", "modus vivendi", "statute", "charter", "pact", "concordat". Furthermore, although the almost universal practice is to record international agreements in writing, international law also recognizes oral agreements as binding. Also, while the classical treaty virtually always assumed the form of a contract (i.e. of an agreement between two or more states) many modern international agreements now assume the form of international legislation, either by confirming existing international law or by creating new international law.

12.02 Agreements examined in the present chapter.-

In the present chapter will be examined all international agreements entered into by Canada until the end of August, 1965. These agreements have been divided into:

- (a) multilateral treaties, which are defined as agreements made with two or more states or with international organizations;
- (b) bilateral treaties, under which heading are classified all agreements made with a single state respectively of the nature or the type of the agreement; and
- (c) exchanges of notes which include all those which are listed as such in the Canada Treaty Series with the exception of the Conventions on Legal Proceedings in Civil or Commercial Matters, which were negotiated by Great Britain and extended to Canada by exchanges of notes.

12.03 Canadian treaty-making power.-

The constitutional and legal position of the treaty-making power of Canada was stated in an official Memorandum of July 21, 1952 from the Government of Canada to the United Nations. We quote the following passage from this Memorandum¹:

" 1. Canada has very few statutory provisions relating to the exercise of the treaty-making power. The rules followed, so far as they can be ascertained, are for the most part founded on unwritten custom.

2. The Constitutional Authority to negotiate and conclude treaties is part of the Royal Prerogative, which in practice is exercised in the name of the Crown by the Governor-General in Council on the advice of the Secretary of State for External Affairs, who is responsible (under the Department of External Affairs Act, R.S.C. 1952, c.68) for the negotiation and conclusion of treaties and other international agreements.¹

3. There is no law imposing any obligation on the Government of Canada to refer treaties or other international agreements to the Parliament of Canada for approval prior to ratification. International obligations are entered into in many instances without reference to Parliament. The negotiation and conclusion of a treaty or other international agreement is an executive act.

4. Before the Government of Canada assumes an international obligation, two things must be considered. First, there is the question whether the provisions of the treaty or obligation accord with existing Canadian law and secondly whether any action proposed to be taken to implement the treaty is authorized by existing law. Entry into an international obligation or treaty, although binding on Canada internationally, does not give it force of law in Canada. Consequently the power of the Federal Government to implement the treaty frequently, though not always, requires

1. International postal agreements are the responsibility of the Postmaster-General under the Post Office Act (S.C. 1951-1st Sess. c.57).

1. cf. Law Practices concerning the Conclusion of Treaties, United Nations Legislative Series, ST/LEG/SER.B/3, pp. 24-25. See also: Grenon, Jean-Yves: "De la Conclusion des Traités et de leur mise en oeuvre au Canada" (1962) 40 Can. Bar R. 151. Mr. Grenon is head of the Treaty Division of the Department of External Affairs.

domestic legislation to be passed by the Parliament of Canada or the Provinces, depending upon whether the subject matter is within federal or provincial jurisdiction according to the British North America Act.

5. The only other statutory provision in Canadian law referring to treaty-making powers is to be found in section 132 of the British North America Act, which reads as follows:

'The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.'

This section of Canada's Constitution has in recent years given rise to some difficulty, although, at the time the Canadian Constitution was drafted, it fulfilled our requirements because Canada did not normally negotiate or conclude its own treaties as it does to-day. Various judicial decisions since 1867, however, have developed a constitutional pattern which at present does not permit the Federal Parliament to implement certain types of treaties without concurrent legislative action on the part of the Canadian Provinces.

7. Section 91 of the British North America Act gives the Parliament of Canada exclusive jurisdiction to legislate in certain fields, while section 92 gives the Provinces exclusive jurisdiction to legislate in certain other fields, including property, civil rights and the administration of justice. Should the conclusion of, or accession to, a treaty by the Federal Government require implementation by changing the Provincial Statute Law, the Federal Parliament cannot effect such change without concurrent legislation on the part of the Provinces, if the subject matter lies wholly or partly within the legislative competence of the Provinces. ...¹

1. cf. Grenon, op. cit., p. 162.

12.04 How Canadian international agreements are negotiated.-

Normally international agreements entered into by Canada are negotiated either at home or abroad by officers of the Department of External Affairs. The manner of negotiation may take a variety of forms. It may be by a full-scale delegation sent specially to an international conference for that purpose or directly by the Canadian mission in the country involved. When the negotiations take place in Canada, this is normally done in Ottawa. In the case of bilateral agreements, signature usually takes place in the capital of the country where the negotiations have been conducted and the instruments of ratification, if required by the agreement, are exchanged in the capital of the other country. Multilateral agreements generally define the appropriate manner of signature and ratification - generally by reference to the depository state or organization. Except for special cases, no permission is needed in order to begin negotiations. But approval by order-in-council is required in all cases before the agreement can be signed. Once such authorization has been given by the Cabinet, the Legal Division of the Department of External Affairs prepares the actual instrument of ratification which is to be signed by the Secretary of State for External Affairs.

12.05 Role of the Legal Division of the Department of External Affairs.-

The Legal Division of the Department of External Affairs does not confine its role to final draftsmanship. It is often

involved in the actual negotiations of a great many treaties. Section 318 of the Manual of Regulations and Instructions of the Department of External Affairs requires that the Legal Division should be consulted at the earliest possible stage of negotiations of a treaty, both as to its form and as to its legal substance. When an agreement is being negotiated in Ottawa, an officer of the Legal Division will be assigned to the meetings whenever this is possible. When negotiations take place abroad and the matter is of sufficient importance, a legal officer may be added to the Canadian delegation. It should be noted, however, that fully one-third of all the officers of the Department of External Affairs are trained lawyers. The Legal Division itself, however, does not have more than twenty officers at any time. It is the responsibility of the Legal Division to insure that agreements conform to international law both as to form and practice and are consonant with previous agreements to which Canada is a party. It is mandatory that the Legal Division approve the final draft of a treaty. The Legal Division is also required to decide whether the preliminary recital and formal section of the proposed agreement respect accepted practice; that the type of agreement is suitable under the circumstances and that Canadian treaty practice has been followed. The Legal Division is further required to check the draft for any possible constitutional conflicts or infringements of provincial rights. Finally, it must determine what form of implementing legislation may be necessary at both the federal and provincial levels.

12.06 Parliamentary ratification.-

The signature of an international agreement by the Secretary for External Affairs or by any other authorized Canadian representative must be followed in many cases by parliamentary implementation.¹ The courts will not enforce the provision of an international agreement or treaty which alters the rights of citizens unless the substance of the treaty has been made into municipal law by enabling legislation. If the subject matter of the agreement falls within federal jurisdiction exclusively, such legislation is passed by Parliament. If a subject matter falling within provincial jurisdiction is affected, provincial ratification is also necessary.²

12.07 The languages of international law: International practice.-

International law permits of a very wide latitude in the choice of language or languages of international agreements. The general rule, the reasons for which are obvious, is that a country will sign a treaty in its own language whenever possible. But this rule can seldom be observed in practice except when all the signatories have the same language. Furthermore, even a perfunctory study of international agreements discloses that several languages, either because of their prestige or their importance, seem to take precedence over others.

Historically, Latin was the language of international communications during the Middle Ages; for a short time in the seventeenth

century, Italian and Spanish assumed the same role; in the

1. Parliamentary ratification is not a condition sine qua non of the validity of treaties, but only a prerequisite for judicial enforcement in most cases. The Executive should not be entitled to legislate by the subterfuge of its treaty-making power: cf. Grenon, op. cit., p. 159 et seq.

2. cf. Grenon, op. cit., pp. 162-3.

eighteenth and nineteenth centuries French dominated European diplomatic affairs. The hegemony of French has been challenged in the twentieth century by English. The role of these so-called diplomatic languages is particularly significant in multilateral agreements which may be signed by a great many countries speaking a variety of languages. While bilateral agreements between countries speaking different languages may be drafted in the language of each country without too much difficulty, such multiplicity of languages is naturally impossible for most multilateral agreements. Recourse is then had to the so-called diplomatic languages. The majority of multilateral treaties are thus drawn up in several languages.

It is common for most United Nations treaties to be drawn in the five official languages of the organization: English, French, Spanish, Russian and Chinese.

12.08 Languages of international agreements: multilingual countries.-

The situation is further complicated for bilingual or multilingual countries such as Canada, Switzerland, Belgium, Finland, Cameroons. International law does not provide any rule governing the use of second or third languages in international agreements. The matter is left to the discretion of the Governments involved which must decide what language or languages they will use for the agreements into which they will enter. Nothing stops a country, unilingual or multilingual, from entering into agreements drawn solely in a foreign language.

Since this is a matter of executive discretion, which will indicate the extent of a Government's determination to use a particular language, a substantial part of the present chapter will be devoted to the study of the use of French and English in agreements entered into by Canada.

12.09 Languages of international agreements: rules of the Canadian Department of External Affairs.-

The Department of External Affairs has only one rule insofar as the use of languages is concerned in international agreements: when Canada signs a treaty, at least one official text must be in either English or French. This rule has only been broken once, namely in a series of exchanges of notes with Venezuela. We have been unable to find any other rule either in the regulations or in the course of interviews with members of the Legal Division. A departmental memorandum entitled "Canada Treaty Procedures" states: "Bilateral agreements are usually drawn up in either of Canada's official languages as well as the language of the other party."¹ The same rule seems to apply to multilateral agreements, which Canada requires to be signed in at least one of its official languages. The Department does not seem to require that either bilateral or multilateral agreements be signed in both of Canada's official languages. Insofar as the exchanges of notes are concerned, the problem is slightly different. Indeed, the notes by either

1. This memorandum which was issued on November 15, 1961 is headed "Restricted" and, therefore, could not be quoted at greater length. However, much of the information in the present sections is drawn from it.
cf. also: Grenon, op. cit., p. 155.

country involved in the exchange will be in only one language. The general rule is that the notes are in the language of the country sending them or replying to them. Each country uses its own language. In other words, while the choice of languages in bilateral or multilateral agreements may be determined by a variety of factors, the general practice in international law is for each country to use its own language when exchanging notes. The only departmental rule we have been able to ascertain in connection with the exchange of notes is that Canada will send notes in only one of its two official languages. Since the Department of External Affairs has a much greater discretion as to the choice of languages in exchanges of notes than in other forms of agreements, its choice in this area will be more instructive, and we have paid much attention to it.

12.10 Publication of international agreements: the Canada Treaty Series.-

Canada signed its first treaty in 1923. It was not until 1931, however, that Canada acquired full competence to direct her external affairs with the Statute of Westminster. But, Canada appears to have been in virtual control of her external affairs as early as 1928. All international agreements signed by Canada (bilateral and multilateral treaties as well as exchanges of notes) are published in the Canada Treaty Series (Recueil des traités canadiens) which began in 1928 and contains Canadian treaties going back to 1926.¹ The Series is published in annual volumes. All

1. for agreements prior to that date, see: Grenon, op. cit., p. 159, especially footnote 31.

agreements are first issued in pamphlet form and numbered consecutively. They are then bound up into the annual volume. In other words, the Series consists of the pamphlets rather than the bound volume which really is a matter of convenience. The Canada Evidence Act¹ provides that evidence of a treaty binding upon Canada may be made by the production of a copy of it purporting to be printed by the Queen's Printer for Canada. Obviously, the text published in the Series is such evidence. The Series has been fully bilingual only since 1951. It is not published with the English and French texts on opposite pages, except in the case of bilateral agreements or exchanges of notes where a language other than French or English is used by a foreign country. In such case the English or French version will appear on a third page since the two official texts are on opposite pages. It is clear that care has been taken, since at least 1951, to assure that texts of Canadian international agreements are available in both French and English. Some form of bilingualism existed in the Canada Treaty Series even earlier than 1951. Indeed, the Series has been totally bilingual since 1951 in the sense that both the French and English copies of all Canadian treaties have been bound into the annual volumes. Since 1928, French copies or translations of all Canadian treaties have been made, but they were not incorporated in series. Before 1941 no French texts were published in the Canada Treaty Series at all unless

1. 1952 R.S.C., c. 307, s. 20.

they were the texts of treaties signed in French only, in which case an English translation was also published. Between 1941 and 1949 a certain number of French translations were published in the Series, but not in a systematic fashion and their number is insufficient to make it possible to say that the French text is always available.

12.11 Purpose of the present study.

The purpose of the present study is to examine every international agreement as defined hereinabove entered into by Canada in order to determine what languages have been used and more particularly the extent to which Canada's two official languages have been employed in conducting the external affairs of the country. The legal consequences of Canadian linguistic practices will also be examined. Finally these agreements have been examined with a view to establishing the extent to which they modify, affect or implement the use of Canada's two languages.

12.12 Not a study of Canadian foreign policy.-

We stress that this is not a study of Canadian foreign policy nor an examination of the functioning of the Department of External Affairs. The study is confined strictly to the languages used by Canada in her external affairs. This study is essentially statistical. However, the statistics should be read against the background of the realities of Canadian external

affairs which are conducted to a large extent with the United States and English-speaking Commonwealth countries.

12.13 Methods of research¹-

Although the present study has been supplemented by a certain number of interviews and by consultation of documents and textbooks, the emphasis has been on the Canada Treaty Series itself. A complete review of the Canada Treaty Series has been made from the first publication of the Series in 1928 until the latest available published text in August, 1965. Each agreement has been examined with a view to determining the languages of its official texts, the languages in which it has been translated, and whether it contains substantive provision affecting matters of languages or biculturalism in Canada. It is customary in multilateral and bilateral agreements to state before the signatures, what the languages are of the official texts of such agreements. In the nineteenth and early twentieth centuries it was not at all uncommon for a distinction to be made when several languages were used, between "official" and "authentic" texts and to also employ the device of official translations. The practice of official translation has become fairly rare, but it has become increasingly more common to state in the agreement itself which texts have equal authenticity at international law. We have limited our study to texts having authentic legal value rather than ^{concerning ourselves} with "official translations". The Canada Treaty Series does not disclose whether

1. Most of the research was done in the library of the Legal Division of the Department of External Affairs. Officers of the Department were most helpful in answering questions and in supplementing information not available in the Canada Treaty Series. We wish to express our gratitude to them.

translations exist or not. In the case of exchanges of notes the reading of the note itself discloses the language used since all notes are sent either in French or in English and never in both languages. Where the Canada Treaty Series refers an unofficial translation, this is indicated by placing the word "translation" between brackets.

B - CHRONOLOGICAL SURVEY OF INTERNATIONAL AGREEMENTS
AFFECTING CANADA OR SIGNED BY CANADA

12.14 Agreements affecting Canada and entered into by Great Britain between 1814 and 1925.-

We have noted that Canada began to sign international agreements itself in the middle 1920. Prior to that all treaties affecting Canada were made by the Imperial Government or by agencies of the Imperial Government in Canada with the sanction of London.¹ In 1927 the Queen's Printer published a work entitled Treaties and Agreements affecting Canada in force between His Majesty and the United States of America, 1814-1925. This work contained information similar to that in the Canada Treaty Series at least insofar as language is concerned. A non-exhaustive list of such agreements with an indication of the language in which they were entered is to be found at the end of this chapter, as annex XII-A. This appendix lists 66 treaties signed between 1814 and 1925. Of these, 19 were multilateral. Fifteen of these multilateral agreements were signed in French, although frequently an official English translation was appended. The remaining 4 were only in English. The 45 other treaties were all signed only in English. The fact that such a large proportion of the multilateral agreements were in French is obviously a reflection of the hegemony of French in diplomatic affairs during the nineteenth and early twentieth centuries. The use of French during the pre-1925 period was certainly not

1. Grenon, op. cit., pp. 158-9 lists the principal sources of pre-1928 agreements and of unpublished agreements.



due to any desire to carry out into Canada's international affairs the official bilingual structure of the country. Indeed, in bilateral agreements and in the exchanges of notes where some latitude existed, the only language used was English, and this even with France!

12.15 First international agreements signed by Canada.-

The first three genuinely Canadian treaties were the Halibut Treaty of 1923, the Boundary Demarcation Treaty of 1925, and the Lake of the Woods Treaty of 1925. Although they were all signed by a French-Canadian, Ernest Lapointe, they were all in English.

12.16 Agreements after 1928.-

For the purposes of our study Canadian diplomatic activity really began in 1928. In appendix XII-B will be found a year-by-year chronological list of all agreements, treaties and exchanges of notes entered into by Canada since that date. As will appear from the examination of annex XII-B, the great bulk of Canada's diplomatic exchanges have been with the United States and Western Europe. Undoubtedly the greatest number of notes and of bilateral agreements were with the United States. Next comes the United Kingdom. The majority of agreements made with continental European countries have been with France, Spain, Germany and Italy and also with some eastern European countries. Many agreements also involved English-speaking Commonwealth countries. But, it must be noted that a good deal of diplomatic activity took place with countries

in continental Europe or in South America where, at least until recently, French was as much a second language as English. The material surveyed in appendix XII-B has been made the subject of detailed statistical analyses which are discussed in the following sections.

C - STATISTICAL ANALYSES

12.17 Methods.-

The tables and statistics contained in the present section are based on an analysis of the materials contained in appendix XII-B. The tables are based on five-year periods, such periods having been adopted throughout the present study in order to provide a statistically significant number large enough to serve as a basis for comparison with other types and periods. Tables 12-1 to 12-8 deal with bilateral treaties; tables 12-9 to 12-16 refer to multilateral treaties; tables 12-17 to 12-24 relate to exchanges of notes. Tables 12-25 to 12-32 provide information on the use of French more particularly. The remaining four tables provide interesting recapitulation.

12.18 Bilateral treaties.-

Tables 12-1 to 12-8 deal specifically with bilateral treaties signed by Canada during the years 1928-1965. As will be noted, within each five-year period the annual breakdown of languages used is stated.

(a) 1928-32

TABLE 12-1

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1928	2		1	3		6
1929						0
1930	1	1	4	1		7
1931	2					2
1932	2					2
TOTALS:	7	1	5	4	0	17

Of the 17 bilateral treaties signed by Canada during this period, 7 were signed in English only, and one in French. Five had both official English and French texts. The remaining 4 were signed in English and in a foreign language.

(b) 1933-37

TABLE 12-2

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	OTHER	Total
1933	4						4
1934	2						2
1935	3		1	10			14
1936	2		1	6		2	11
1937	4		1	1			6
TOTALS:	15	0	3	17	0	2	37

Thirty-seven agreements were signed during this period, of which 15 were in English only and none in French. Three were in both English and French. Seventeen were in English and in another language; and 2 were entirely in a foreign language.

(c) 1938-42

TABLE 12-3

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1938	1		1	2		4
1939	2			3		5
1940	5			1		6
1941	5			3		8
1942	2			2		4
TOTALS:	15	0	1	11	0	27

Of the 27 agreements entered into during that period, 15 were in English only; none were in French; and one was in both English and French. All the others were in English and a second language.

(d) 1943-47

TABLE 12-4

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1943						0
1944	8		1	4		13
1945	10					10
1946	14		1	3		18
1947	9		1	1		11
TOTALS:	41	0	3	8	0	52

Canada entered into 52 bilateral treaties during this period of which 41 were in English only and none in French. Three were in both English and French. All the others were in English and a second language.

(e) 1948-52

TABLE 12-5

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1948	3		2			5
1949	3		1			4
1950	4		1			5
1951	3	1		1		5
1952	7			1		8
TOTALS:	20	1	4	2	0	27

Out of 27 bilateral agreements, 20 were in English only; 1 in French only; 4 in both French and English; and the remaining 2 in English and a second language.

(f) 1953-57

TABLE 12-6

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Eng. Fr.& German	Total
1953	2		2		1	5
1954				1		1
1955	6			4		10
1956	2	1		2		5
1957	6			3		9
TOTALS:	16	1	2	10	1	30

Out of a total of 30 agreements, 16 were in English only; 1 in French; 2 in both French and English; 1 in English, French and German; and all the others in English and a second language.

(g) 1958-62

TABLE 12-7

	Eng.	Fr.	Eng. & F.	Eng. & other	Fr. & other	Total
1958	6		1			7
1959	2			1		3
1960	4			3		7
1961			1	3		4
1962	5		1			6
TOTALS:	17	0	3	7	0	27

Out of 27 agreements, 17 were in English only; none in French; 3 in both English and French; and all the others in English and a second language.

(h) 1963-65

TABLE 12-8

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1963	4		1	4		9
1964	3			2		5
<u>1965</u>				8		8
TOTALS:	7	0	1	14	0	22

Out of a total of 22 bilateral treaties signed by Canada up to and including the 21st day of August, 1965, 7 were in English only; none in French only; 1 in both French and English; and all the others in English and a second language.

(i) Summary.-

The most salient features of the foregoing analysis of bilateral agreements signed by Canada during the previous four decades are the large number of treaties signed only in English and the almost total absence of agreements signed either exclusively in French or in French and a second language. It is significant that in every single instance Canada has signed a bilateral agreement with another country and the language of that country as well as one of Canada's official languages have been used, the language used by Canada has been English.

12.19 Multilateral agreements.-

The following tables provide a statistical analysis of language used in multilateral agreements entered into by Canada from 1928 to the end of August 1965. The same statistical methods have been used as in the case of bilateral agreements.

(a) 1928-32

TABLE 12-9

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Fr. & other	Total
1928	2	2				4
1929		2	1			3
1930	1		6	2		9
1931	1	1	1			3
1932			3			3
TOTALS:	4	5	11	2	0	22

During this period Canada entered into 22 multilateral treaties of which 4 were only in English, 5 were only in French, 11 were in both English and French, and 2 were in English and another language.

(b) 1933-37

TABLE 12-10

	Eng.	Fr.	Eng. & Fr.	Eng.-Fr. -German	OTHER	Total
1933	1		2			3
1934	1	3	1			5
1935			1	1		2
1936	1	1	1			3
1937			2		1	3
TOTALS:	3	4	7	1	1	16

Out of these 16 multilateral treaties, 3 were in English only; 4 were in French only; 7 were in English and French; one of the remaining two was in Spanish only and one in English, French and German.

(c) 1938-42

TABLE 12-11

	Eng.	Fr.	Eng. & Fr.	E.F.S.	E.F.S. Port.	Total
1938	1	1	5		2	9
1939			1			1
1940	1		1			2
1941	2			1		3
1942	1	1				2
TOTALS:	5	2	7	1	2	17

Of the 17 agreements signed during this period, 5 were in English only; 2 in French; 7 in both English and French; and the remainder in both English, French and one or two other languages.

(d) 1943-47

TABLE 12-12

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Eng.Fr. & other	Total
1943	2		1		1	4
1944	2		3	1	1	7
1945	7		3	1	2	13
1946	2		10	1	3	16
1947	2	2	6	4	3	17
TOTALS:	15	2	23	7	10	57

Canada signed 57 multilateral agreements during this period, of which 15 were in English; 2 in French, 23 in both English and French, 10 in English, French and other languages, and the remainder in English and other languages.

(e) 1948-52

TABLE 12-13

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Eng.Fr. & other	Fr. & other	Total
1948	2	1	8		3		14
1949			3		2		5
1950	2	1			1		4
1951		1	6	1	2		10
1952	1		5		3	1	10
TOTALS:	5	3	22	1	11	1	43

Of the 43 agreements covered during this period, 5 were in English; 3 in French; 22 in both English and French; 11 in English, French and other languages; one in English and an other language; and 1 in French and an other language.

(f) 1953-57

TABLE 12-14

	Eng.	Eng. & Fr.	Eng. & other	Eng.Fr. & other	Fr. & other	Total
1953	1	3	1	4	1	10
1954		5	2	2		9
1955	1	5	2			8
1956	3	1		3		7
1957		2	3	6		11
TOTALS:	5	16	8	15	1	45

Canada signed 45 multilateral agreements during this period of which 5 were in English only, but none in French only. Sixteen agreements were in both English and French. Of the remainder, 15 were in English, French and other languages, 8 were in English and a language other than French, and 1 was in French and another language.
(g) 1958-62

TABLE 12-15

	Eng.	Fr.	Eng. & Fr.	Eng. & other	Eng.Fr. & other	Fr. & other	Total
1958			1	1	3	1	6
1959	3	1			2	2	8
1960	1		1		1		3
1961	1		1				2
1962						2	2
TOTALS:	5	1	3	1	6	5	21

Out of 21 agreements, 5 were in English only, 1 was in French only and 3 in English and French. Of the remainder, 6 were in English, French and one or more other languages, five were in English and languages other than French, and one was in French and another language.
(h) 1963-65

TABLE 12-16

	Eng.	Eng. & Fr.	Eng. & other	Eng.Fr. & other	Total
1963			1	2	3
1964	2	1	1		4
1965					0
TOTALS:	2	1	2	2	7

Through this period terminating on August 21, 1965, Canada signed 7 multilateral agreements of which 2 were in English only, none in French, and 1 in both English and French. Two agreements were signed in English, French and other languages, and 2 in English and other languages.

(i) Summary.-

A large proportion of the multilateral agreements entered into by Canada are in both English and French. Multilateral agreements in English only are relatively rare and in French only represent a negligible quantity. The large number of agreements in which both French and English are official, either alone or with other languages, should not be taken as being too significant for the purposes of our study since Canada may have little choice in selecting the language of multilateral agreements, an increasing number of which are drafted as a matter of course in the five United Nations languages. The figures for bilateral agreements and exchanges of notes will obviously give a much more faithful reflection of the actual practices of the Department of External Affairs.

12.20 Exchanges of notes.-

The following 8 tables are devoted to an analysis of the language used by Canada in sending notes to other countries. The same statistical methods have been used as in connection with bilateral and multilateral agreements. However, a distinction has been made to identify the exchanges with France, Switzerland and Belgium which, for the purposes of our study, have been deemed to be either totally or principally French-speaking countries. Figures are first given for exchanges of notes with these countries, the second set of figures referring to all other countries. Since on very rare occasions a language other than French or English has been used in exchanges of notes, the figures are given in a column headed "others". They were all in Spanish and all sent to Venezuela.

(a) 1928-32

TABLE 12-17

	<u>To France,Switz. & Belgium</u>		<u>To others</u>			<u>Total</u>
	Fr.	Eng.	Fr.	Eng.	Other	
1928	1			8		9
1929				14		14
1930				2		2
1931				2		2
1932	1			2		3
TOTALS:	2	0	0	28	0	30

Of the 30 notes sent during this period all but the 2 sent to France were in English.

(b) 1933-37

TABLE 12-18

	<u>To France, Switz. & Belgium</u>		<u>To others</u>			<u>Total</u>
	Fr.	Eng.	Fr.	Eng.	Other	
1933				4		4
1934				6		6
1935				7		7
1936				5		5
1937	1			8		9
TOTALS:	1	0	0	30	0	31

Of the 31 notes sent by Canada during this period, all but the single one sent to France were in English.

(c) 1938-42

TABLE 12-19

	<u>To France, Switz. & Belgium</u>		<u>To others</u>			<u>Total</u>
	Fr.	Eng.	Fr.	Eng.	Other	
1938	1			11		12
1939				7		7
1940				7		7
1941				9		9
1942				20		20
TOTALS:	1	0	0	54	0	55

Canada exchanged 55 notes during this period and they were all in English except the single one with France.

(d) 1943-47

TABLE 12-20

	<u>To France, Switz. To others</u> <u>& Belgium</u>			<u>Total</u>		
	Fr.	Eng. Eng. Fr. Eng. Other				
		&Fr.				
1943				17		17
1944				21		21
1945	1			9		10
1946		2		19		21
1947	2	1	1	12		16
TOTALS:	3	3	1 0	78	0	85

During this period Canada exchanged 85 notes. Of these, 7 went to French-speaking countries, but only 3 of these 7 were in French and 1 was in both French and English. The other 3, together with all 78 notes exchanged with non-French-speaking countries, were in English.

(e) 1948-52

TABLE 12-21

	<u>To France, Switz. To others</u> <u>& Belgium</u>			<u>Total</u>		
	Fr.	Eng. Eng.& Fr.	Fr. Eng. Other			
1948		1		15		16
1949	1		1	16		18
1950	1			11		12
1951	1	1	1	19		22
1952			1	18		19
TOTALS:	3	1	1 3	79	0	87

During this period Canada issued 87 notes. Five of them went to French-speaking countries. Of these 5, 1 was in English, 1 was in both English and French, and 3 were in French, although it should be noted that these 3 French notes were, in fact, sent in both English and French, since they went to a number of allied countries besides France. The French-speaking countries received the French version and the other countries received the English version. Of the remaining 82 notes, going to non-French-speaking countries, 79 were in English and 3 were in French.

(f) 1953-57

TABLE 12-22

	To France, Switz. To others & Belgium			Total		
	Fr.	Eng.	Eng.& Fr.	Fr.	Eng.	Other
1953					15	
1954					6	
1955		1			16	
1956	1	1	1		11	
1957					15	1
TOTALS:	1	2	1	0	63	1

Canada exchanged 68 notes during this period of which 4 went to French-speaking countries. Of these 4, 2 were entirely in English, 1 was in French, and 1 was in both English and French. Of the remaining 64 notes, 63 were in English and one was in Spanish.

(g) 1958-62

TABLE 12-23

	<u>To France, Switz. & Belgium</u>		<u>To others</u>			<u>Total</u>
	Fr.	Eng.	Fr.	Eng.	Other	
1958	2			17	1	20
1959	1			10	2	13
1960				11	1	12
1961				12		12
1962	1		1	11		13
TOTALS:	4	0	1	61	4	70

Of these 70 notes exchanged within this period, 4 went to French-speaking countries and all 4 were in French. Of the remaining 66 notes, 61 were in English, 1 was in French and 4 were in Spanish.

(h) 1963-65

TABLE 12-24

	<u>To France, Switz. & Belgium</u>		<u>To others</u>			<u>Total</u>
	Fr.	Eng.	Fr.	Eng.	Other	
1963				12		12
1964		1		17		18
1965				5		5
TOTALS:	0	1	0	34	0	35

From the beginning of 1963 to August 21, 1965, Canada issued 35 notes. One of them went to a French-speaking country and was in English. The remaining 34 were all in English.



(1) Summary.-

It is evident from the foregoing tables that when the Department of External Affairs has discretion as to the choice of language, as it normally does in the exchange of notes, it almost always uses English and practically never French. Even in dealing with French-speaking countries, it is not unusual for the Department to send its notes in English.

12.21 Summary of the use of French in Canadian international agreements.-

The following eight tables are devoted to a further breakdown in five-year periods of the use of French in Canadian international agreements. All international agreements entered into by Canada are normally drafted in at least one of Canada's two official languages. The small number of notes exchanged in Spanish with Venezuela are regarded by the Department of External Affairs as a rare and not entirely desirable variation of the rule. The Department believes that failure to use at least one of Canada's official languages will create problems in translation and publication of texts in Canada. The following tables are designed to give an indication of the use of French by Canada in entering international agreements with countries other than France, Belgium and Switzerland which, for the purpose of the present study, have been deemed to be entirely French-speaking. The number of bilateral or multilateral agreements and exchanges of notes in French is broken down into those made with French-speaking countries and those made with non-French-speaking

countries and there is a further breakdown in the case of French-speaking countries between agreements made entirely in French and in both French and English.

(a) 1928-32

TABLE 12-25

	<u>Bilateral Treaties</u>		<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>	<u>Total</u>
	<u>France, Switz. & Belgium</u>			<u>France, Switz. & Belgium</u>	
	<u>Fr. Fr. & Eng.</u>				
1928		1	2	1	4
1929			3		3
1930	1	3	6		10
1931			2		2
1932			3	1	4
TOTALS:	1	4	16	2	23

During this period, out of 17 bilateral agreements entered into by Canada, 5 were in French, of which 1 was in French only and 4 were in French and another language. Of 22 multilateral agreements, 16 were in French (5 in French only and 11 in both French and English). Of 30 notes exchanged during that period, only 2 were in French. This means that out of a total of 69 international agreements entered into by Canada during this period, 23 were either entirely or partly in French, which is exactly one-third.

(b) 1933-37TABLE 12-26

<u>Bilateral Treaties</u>		<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>	<u>Total</u>
<u>France, Switz. & Belgium</u>			<u>France, Switz. & Belgium</u>	
<u>Fr. & Eng.</u>				
1933		2		2
1934		4		4
1935	1	2		3
1936	1	2		3
1937	1	2	1	4
TOTALS:	3	12	1	16

Out of a total of 37 bilateral agreements entered into by Canada during this period, only 3 were in French and all of them with French-speaking countries. Out of 16 multilateral agreements, 4 were in French alone, 7 were in both English and French, and 1 was in English, French and German. Out of 31 notes, 1 only was in French. This means that only 16 international agreements out of 84 were either entirely or partly in French, which is exactly 19%.

(c) 1938-42TABLE 12-27

<u>Bilateral Treaties</u>		<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>	<u>Total</u>
<u>Others</u>			<u>France, Switz. & Belgium</u>	
<u>Fr. & Eng.</u>				
1938	1	8	1	10
1939		1		1
1940		1		1
1941		1		1
1942		1		1
TOTALS:	1	12	1	14

During this period Canada entered into 27 bilateral agreements, of which only 1 was in French and English; 17 multilateral agreements, of which 2 were in French only, 7 in both English and French, 1 in English, French and Spanish, and 2 in English, French, Spanish and Portuguese; there were 55 exchanges of notes, of which 1, with a French-speaking country, was in French. During this period, consequently, only 14 agreements out of 99 used French to some extent, which is a percentage of 14.1%

(d) 1943-47

TABLE 12-28

<u>Bilateral Treaties</u>		<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>		<u>Total</u>
<u>France, Switz. & Belgium</u>			<u>France, Switz. & Belgium</u>		
<u>Fr. & Eng.</u>			<u>Fr.</u>	<u>Fr.& Eng.</u>	
1943		2			2
1944	1	4			5
1945		5	1		6
1946	1	13			14
1947	1	11	2	1	15
<hr/>					
TOTALS:	3	35	3	1	42

Canada signed 52 bilateral agreements through this period, and only 3 of them (all with French-speaking countries) were in French and English. Fifty-seven multilateral agreements were signed, of which a total of 35 used French (2 in French only, 23 in English and French, and the remainder in English, French and other languages). Eighty-five notes were exchanged, of which 3 were entirely in French and 1 in French and English (being with French-speaking countries). During this period,

thus, out of a total of 194 international agreements entered into by Canada, 42 give a measure of recognition to French which is a percentage of 21.1%.

(e) 1948-52

TABLE 12-29

<u>Bilateral Treaties</u>		<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>			
France, Switz. & Belgium			France, Switz. & Belgium		<u>Others</u>	<u>Total</u>
<u>Fr.</u>	<u>Fr.&Eng.</u>		<u>Fr.</u>	<u>Fr.&Eng.</u>		
1948	2	12		1		15
1949	1	5	1		1	8
1950	1	2	1			4
1951	1	9	1		1	12
1952		9			1	10
TOTALS:	1 4	37	3	1	3	49

Through this period Canada entered into 27 bilateral agreements, of which 1 was in French only and 4 in both French and English, all of them with French-speaking countries. Of 43 multilateral treaties, 37 had at least one text in French. There were 87 notes, of which 7 had at least one text in French: 3 in French only and 1 in English and French with French-speaking countries; and 3 in French only with other countries. This gives a total of 49 agreements in French out of a total of 157, or 31.2%.

(f) 1953-57

TABLE 12-30

<u>Bilateral Treaties</u>			<u>Multilateral</u> <u>Treaties</u>	<u>Exchanges of</u> <u>Notes</u>		<u>Total</u>	
<u>France, Switz.</u> <u>& Belgium</u>				<u>France, Switz.</u> <u>& Belgium</u>			
<u>Fr.</u>	<u>Fr.&</u> <u>Eng.</u>	<u>Fr.Eng.</u> <u>&German</u>		<u>Fr.</u>	<u>Fr.&Eng.</u>		
1953	2	1	8			11	
1954			7			7	
1955			5			5	
1956	1		4	1	1	7	
1957			8			8	
<hr/>							
TOTALS:	1	2	1	32	1	1	38

Of the 30 bilateral agreements signed during this period, 1 was entirely in French, 2 were in both French and English, and 1 was in French, English and German; all 4 being with French-speaking countries. Thirty-two of the 45 multilateral treaties had at least one text in French. Of 68 notes, 2 only had at least one text in French and were exchanged with French-speaking countries. This gives a total of 38 agreements in French out of a total of 143, or 26.5%.

(g) 1958-62TABLE 12-31

	<u>Bilateral Treaties</u>	<u>Multilateral Treaties</u>	<u>Exchanges of Notes</u>	<u>Total</u>
	<u>France, Switz. Belgium</u>		<u>France, Switz. & Belgium</u>	<u>Others</u>
	<u>Fr.&Eng.</u>			
1958	1	5	2	8
1959		5	1	6
1960		2		2
1961	1	1		2
1962	1	2	1	5
TOTALS:	3	15	4	23

During this period Canada signed 27 bilateral agreements of which none were in French only, but 3 were in both French and English. At least 15 of the 21 multilateral agreements had 1 text in French. There were 70 notes of which 5 were in French, 4 of them with France and 1 with a country which was not French-speaking. This gives a total of 23 agreements out of 118 in which at least one text was in French, or a percentage of 19.4%.

(h) 1963-65TABLE 12-32

	<u>Bilateral treaties</u>	<u>Multilateral Treaties</u>	<u>Total</u>
	<u>France, Switz. & Belgium</u>		
	<u>Fr.&Eng.</u>		
1963	1	2	3
1964		1	1
1965			0
TOTALS:	1	3	4

During this period ending on August 21, 1965, one of the 22 bilateral treaties entered into by Canada were in French. There were 7 multilateral agreements of which 3 had at least one French text. None of the 35 notes exchanged by Canada during this period were in French. Thus, out of a total of 64 international agreements in this 2½-year period, 4 had at least one text in French, or 6.2%.

(1) Summary.-

From the foregoing tables it would appear that French is used in bilateral agreements only when the other country is French-speaking. In multilateral agreements there is a higher proportion of French which might be due to a variety of factors including the fact that French-speaking countries are involved and that all United Nations agreements tend to be in the five official languages of the organization. Exchanges of notes, to all intents and purposes, are always in English except when made with French-speaking countries, although even then a substantial number of them are in English. But the totals are striking:

TABLE 12-33

Proportion of French agreements (1928-65)

	<u>At least one text in French</u>	<u>Total of agreements</u>
Bilateral agreements:	25	239
Multilateral agreements:	162	228
Exchanges of notes:	22	461
TOTALS:	209	928

12.22 Recapitulation.-

The present paragraph is devoted to recapitulations of some of the foregoing tables.

TABLE 12-34

Recapitulation of use of French in Bilateral agreements and exchanges of notes (1928-65):

- Note:
- (a): Bilateral treaties and exchanges of notes with France, Switzerland and Belgium;
 - (b): Total of bilateral agreements and exchanges of notes of which at least one version is in French;
 - (c): Absolute totals of bilateral agreements and exchanges of notes.

	<u>Bilateral Treaties</u>			<u>Exchanges of notes</u>		
	(a)	(b)	(c)	(a)	(b)	(c)
1928-32	5	5	17	2	2	30
1933-37	3	3	37	1	1	31
1938-42	0	1	27	1	1	55
1943-47	3	3	52	4	4	85
1948-52	5	5	27	4	7	87
1953-57	4	4	30	2	2	68
1958-62	3	3	27	4	5	70
1963-65	1	1	22	0	0	35
TOTALS: (1928-65)	24	25	239	18	22	461

Table 12-34 is a breakdown for the years 1928-65 of the number of bilateral agreements and exchanges of notes in French, with a further breakdown of agreements and notes made with French-speaking countries contrasted with the total of all agreements and notes entered into by Canada during the same period. The table is subdivided in bilateral agreements and exchanges of notes. We have already noted that, as a rule, French is never

used in bilateral agreements or in exchanges of notes except when the other country is French-speaking (France, Belgium and Switzerland). In the rare cases where notes were exchanged or bilateral agreements made with other countries, and French was used, such countries also had French as their official language (San Marino, Monaco, Luxembourg and Haiti).

TABLE 12-35

Percentages of agreements and notes in French (1928-65):

	<u>Bilateral agreements</u>	<u>Multilateral agreements</u>	<u>Exchanges of Notes</u>	<u>Percentage of all agreements in French</u>
1928-32	29.2%	72.7%	6.6%	33.3%
1933-37	8.1%	75.0%	3.0%	19.0%
1938-42	3.7%	70.7%	1.8%	14.1%
1943-47	5.7%	61.4%	4.6%	21.1%
1948-52	18.5%	86.0%	8.0%	31.2%
1953-57	13.3%	71.1%	2.9%	26.5%
1958-62	11.1%	71.4%	7.1%	19.4%
1963-65	4.5%	42.8%	0 %	6.2%
TOTALS: (1928-65)	10.4%	71%	4.7%	22.5%

From table 12-35 it appears that only 22.5% of all international agreements entered into by Canada have French as one of their official languages. This percentage would be much lower if it did not include multilateral agreements of which 71% have at least one French version, a percentage which is relatively high, but reflects the realities of international diplomacy more than Canadian policies. Indeed, where the Department of External

Affairs appears to have a much wider latitude, namely in signing bilateral agreements and in exchanging notes, the percentages sink respectively to 10.4% for bilateral treaties, and 4.7% for exchanges of notes.

TABLE 12-36

Cross-tabulations (1928-1965):

	<u>Total notes</u>	<u>Total French notes</u>	<u>Total Bi- lateral agree- ments</u>	<u>Total French Bilateral agree- ments</u>	<u>Total multi- lateral agree- ments</u>	<u>Total French multi- lateral agree- ments</u>	<u>Total all agree- ments</u>	<u>Total all French agree- ments</u>
1928-32	30	2	17	5	22	16	69	23
1933-37	31	1	37	3	16	12	84	16
1938-42	55	1	27	1	17	12	99	14
1943-47	85	4	52	3	57	35	194	42
1948-52	87	7	27	5	43	37	157	49
1953-57	68	2	30	4	45	32	143	38
1958-62	70	5	27	3	21	15	118	23
1963-65	35	0	22	1	7	3	64	4
TOTALS: (1928-65)	461	22	239	25	228	162	928	209

12.23 Conclusions.-

The foregoing statistical analysis is based almost entirely upon the texts published in the Canada Treaty Series. The tables contain only mathematical computations and do not represent a study of policies motivating the choice of language by the Department of External Affairs. Nor has any attempt been made to determine the practical considerations, if any, motivating the choice of language in any particular case. But we believe

that even with these reservations, the statistical analysis of the 928 international agreements entered into by Canada since the beginning of 1928 and up to and including the 21st of August, 1965, leads to a number of clear and inescapable conclusions. The obvious one is the almost complete predominance of English as the exclusive language in which Canada conducts its international affairs. We have seen that notes sent by Canada to other countries are always in either French or English. The choice is with the Department of External Affairs. Of the 461 notes exchanged during this period by Canada, only 22 (or 4.2%) have been in French. During the same period Canada signed 239 bilateral agreements, and only 25 of these (or 11.7%) had at least one official text in French. In fact, many of these 25 were in both French and English. It is true that the situation is quite different insofar as multilateral agreements are concerned and that out of a total of 228, 162 (or 68.8%) had at least one version in French. But we have seen that the language of multilateral agreements need not necessarily reflect Canadian linguistic policies and probably seldom does. While on the one hand, even a perfunctory perusal of appendix XII-A discloses that a great many of Canada's international agreements are made with English-speaking countries such as the United States and the United Kingdom (roughly 30%) and many with English-speaking countries in the Commonwealth, on the other hand, many treaties are entered into with countries to which the use of French is no more alien than that of English. The fact is that Canada practically never uses French except when it deals with French-speaking countries such as France, Switzerland, and Belgium. In all other cases, English is used. Still, attention should be

drawn to the Automotive Agreement signed with the United States in 1965¹ as the first bilateral agreement entered into by Canada with the United States, or with any English-speaking country for that matter, in both French and English.

12.23(a) Comparison with Quebec practices.-

In order to provide a background against which to judge the linguistic practices of the federal government in negotiating international agreements, we believe that it would be instructive to compare them with those of Quebec until recently. We were unable to conduct a systematic survey of all Quebec agreements for a number of practical reasons. However, from the fragmentary information available to us, it would appear that in most cases when Quebec has dealt with English-speaking jurisdiction its agreements have been in English only. For instance, 5 agreements have been entered into under the Quebec Succession Duties Act. In a letter dated September 10, 1965 from Mtre James O'Reilly, Legal Adviser of the Succession Division of the Quebec Department of Revenue, to Mtre Jacques Robichaud, which the latter forwarded to us, it is indicated that these agreements (with Northern Ireland, Great Britain, Trinidad and Tobago, Ontario and British Columbia) were all in English:

" 1. Il s'agit de cinq ententes:

a) avec l'Irlande du Nord (mise en effet par l'arrêté en conseil no 852, 7 avril 1932);

b) avec la Grande-Bretagne (mise en effet par l'arrêté

1. No. 2, 1965 - Canada Treaty Series.

en conseil no 853, 7 avril 1932);

- c) avec Trinidad et Tobago (mise en effet par l'arrêté en conseil no 862, 24 avril 1934;
- d) avec la Province d'Ontario (mise en effet par l'arrêté en conseil no 181, 18 janvier 1945);
- e) avec la Province de la Colombie-Britannique (mise en effet par l'arrêté en conseil no 846, 22 mai 1963).

2. Pour ce qui a trait aux trois premières ententes, il n'existe aucun écrit renfermant les termes précis de ces accords. Il s'agissait plutôt d'un échange de correspondances (transmis par l'intermédiaire du bureau du Secrétaire d'Etat, à Ottawa), dans lequel les parties s'obligeaient à prendre les mesures qui s'imposaient, afin d'éviter que les mêmes biens soient assujettis à une imposition par les deux juridictions concernées.

Me Eugène Rivard, percepteur des droits successoraux pour la Province de Québec dans le temps, me confirme que ladite correspondance était toujours faite en anglais.

3. Dans le cas de l'entente avec la Province d'Ontario, il y a bien un écrit spécifiant les termes de l'accord, lequel écrit a été rédigé originalement en anglais et signé seulement en anglais. Me Rivard m'assure que c'était lui-même qui s'occupait de la traduction et celle-ci venait par après seulement.

4. Enfin, pour ce qui est de l'entente avec la Colombie-Britannique, les démarches précédentes n'étaient que verbales. Au dire de Me Georges Cordeau, actuellement directeur du service des droits sur les successions pour la Province, il était convenu entre les deux représentants venus de la Colombie-Britannique et les responsables du Ministère du Revenu de Québec que le Québec étendrait les dispositions de l'article 59 de sa loi des droits sur les successions à la Colombie-Britannique si celle-ci accordait d'abord les mêmes privilèges qu Québec. Ces pourparlers ont eu lieu en anglais."

We were also informed by Mr. Jacques Prémont, Clerk of the Executive Council¹ that when agreements are entered into with English-speaking governments, such as London or Washington, English is used and only the English version is official. A French "office translation" is

1. In an interview with one of our representatives at Quebec City on August 26, 1965.

prepared for the government's own file but is not authentic.
On the other hand, agreements with French-speaking countries
tend to be in French.

D - INTERPRETATION OF INTERNATIONAL INSTRUMENTS

12.24 Interpretation in general.-

Treaties and other instruments concluded among nations are subjected to canons of interpretation not unlike those applied by the courts to the interpretation of statutes, contracts, wills, and other legal instruments.¹ However, variations of certain of the ordinary rules of interpretation are necessitated by the wider purposes and the peculiar nature of agreements possessing international character and scope. Some of the better known traditional canons of interpretation of treaties are set forth by Briggs² as follows:

"Practically all treatises on international law have sections on the so-called 'canons of interpretation' of treaties. Analysis reveals that the canons consist largely of the application of principles of logic, equity, and common sense to the text of a treaty in an endeavor to discover its 'clear' or 'natural' meaning.¹⁵

Most writers, comments the Harvard Research, 'have begun with the fundamental principle that the function of interpretation is to discover what was, or what may reasonably be presumed to have been, the intention of the parties to a treaty when they concluded it, and that this is to be accomplished by the application of certain rules of logic and grammar to the instrument itself. Fundamental among those rules is the one laid down by Vattel: 'It is not permissible to interpret what has no need of interpretation'. Other rules more or less generally agreed upon include those to the effect that usually the words of a treaty should

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1. cf. for rules of interpretation of statutes: ss. 3.41 to 3.47.
 2. Briggs, H.W., The Law of Nations, New York, 1952, pp.897-898 (editor's note).

be interpreted in the sense which they would normally have in their context; that technical terms should be given their technical meaning; that no word, phrase or clause in a treaty should be considered as being without meaning, in the absence of clear evidence to the contrary; that a treaty should be considered as a whole and each of its parts in the light of all the others; that an interpretation which would lead to an unreasonable to absurd result, or one which would render a treaty inoperative, ineffective or nugatory should be avoided; that in cases of doubt, that interpretation should be adopted which involves the minimum of obligation for the parties and which is most favorable to the freedom and independence of States; that that interpretation of a provision is to be preferred which is least to the advantage of the party for whose benefit it was inserted in the treaty, or which is least onerous for the party making a concession.'

footnote 15. [ED.: McNair, op. cit., 175; gives a telling illustration of the danger of looking for 'natural' meanings of 'plain terms': "A man, having a wife and children, made a will of conspicuous brevity consisting merely of the words 'All for mother.' " Despite the 'clear' of 'natural' meaning of the word 'mother', the widow claimed and won the estate on proof that within the family circle she was called 'mother'. Thorn v. Dickens, [1906] P., 41 Weekly Notes (March 10, 1906), 54.]

A more recent statement of the guiding principles of interpretation of treaties¹ drawn from the experience of courts in cases involving treaties suggest an approach less technical than the traditional one, and more oriented toward policy and for purpose:

"10 La matière est dominée par un principe essentiel ..., savoir qu'une institution internationale, et de même certains traités, une fois créés, acquièrent une vie propre et se développent conformément non pas à

1. Alvarez, A., Le Droit International Nouveau, Paris, 1959, pp. 498-499.

la volonté de leurs auteurs mais aux conditions changeantes de la vie sociale et internationale.

... C'est en regardant en avant et non pas en arrière qu'il faut procéder à l'interprétation des institutions et traités;

2° On ne doit recourir à l'examen des travaux préparatoires que quand il s'agit de rechercher la volonté des parties dans les matières qui affectent spécialement leurs intérêts;

3° Dans l'interprétation des traités, on ne doit donc pas s'en tenir strictement à la lettre des textes, si clairs soient-ils, mais tenir compte spécialement de leur esprit, du but poursuivi. Il faut s'inspirer de l'axiome célèbre: 'la lettre tue, l'esprit vivifie';

4° Il y a lieu d'établir en conséquence que les dispositions, mêmes claires, d'un traité doivent rester sans effets ou recevoir une interprétation appropriée quand, en raison des modifications survenues dans la vie internationale, leur application conduirait à des injustices manifestes ou à des résultats contraires aux fins de l'institution dont il s'agit. C'est, en somme, l'application de la clause rebus sic stantibus.

Il faut donc choisir entre suivre à la lettre les dispositions des textes, même s'ils conduisent à des résultats déraisonnables, ou modifier ces textes lorsque cela apparaît nécessaire. Le choix n'est pas douteux;

5° Quand dans une convention on trouve des dispositions qui ne sont pas conformes aux principes du Droit international en vigueur mais qui ne se proposaient pas de les modifier et étaient seulement le résultat d'un examen incomplet du sujet, ladite convention doit être interprétée ou plutôt établie conformément à l'esprit général de la législation internationale en vigueur ou modifiée. ...

6° Des considérations précédentes il résulte qu'on peut, par l'interprétation, reconnaître à une institution des droits qu'elle n'a pas d'après les textes qui l'ont créée, si ces droits sont en concordance avec la nature et

les buts de l'institution. ...

7° ... de ce qui précède, il résulte aussi qu'on peut, par l'interprétation, modifier de façon plus ou moins importante les traités ... et cela afin d'harmoniser les textes avec les réalités de la vie internationale."

12.25 Interpretation of multilingual instruments.-

When there is a discrepancy among the individual texts in different languages, there are, in addition to the ordinary canons of interpretation, other rules developed by international tribunals and national courts dealing with treaties.¹

(a) In the absence of provision to the contrary, none of the texts of a multilingual treaty is superior to the others. Where it is stated that only a certain version is authentic, that version should be relied upon.²

(b) When the treaty does not indicate which text is authentic or which, in case of divergence, should prevail, it is permissible to interpret two or more texts by reference to the other texts.³ On some occasions the courts have gone as far as to practically amend a text which they considered deficient in order to give it the same effect as clearer texts

1. McNair, op. cit., p. 432.

2. Pyrene Co. Ltd v. Scindia Navigation Co. Ltd. [1954] 2 Q.B.D., 403 (England, Queen's Bench Division)

3. Re Italian Special Capital Levy Duties (1951) 18, Int. L.R. 406 no. 128 (Franco-Italian Conciliation Commission, Aug. 29, 1949); The Kronsprins Gustaf Adolf; The Pacific 6 Annual Digest, p. 372 no. 205 (Arbitration) July 18, 1932; Poznanski v. German State 5 Annual Digest, p. 506, no. 298, (Germano-Polish Mixed Arbitral Tribunal, Aug. 1, 1929); National Bank of Egypt v. German Government and Bank fur Handel und Industrie 2 Annual Digest p. 21, no. 9 (Anglo-German Mixed Arbitral Tribunal, May 31, 1924)

of the treaty.¹

(c) Sometimes courts seek to ascertain the working language in which the treaty was negotiated and drafted and regard that as the most important.²

(d) Where in two versions of equal authority, a term in one appears to have a wider meaning than the corresponding term in the other, the more limited interpretation which can be made to harmonize with both versions should be adopted, as it is probably more in accordance with the true common intention of the parties.³

(e) Where a term in one version is clearer than its counterpart in another version, the less clear text must be interpreted in the light of the other text and in agreement with the meaning which follows from the language of the latter text.⁴

(f) Where in case of discrepancy between two texts, the text in one language contained a clear and well-known legal concept and the other text employed a vague term corresponding to no definite legal idea, the former text was preferred to the

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1. Binon v. German State and Silesian Fire Insurance Co. Vol. 1 Annual Digest of Public International Law Cases, p. 290 no. 274 (Germano-Belgian Mixed Arbitral Tribunal, June 1, 1922) Société Anonyme du Charbonnage Frédéric Henri v. Germany, *ibid.*, p. 227, no. 158 (Franco-German Mixed Arbitral Tribunal, Sept. 30, 1921).
 2. Exchange of Greek and Turkish Populations 3 Annual Digest, p. 368 no. 280 (P.C.I.J., Feb. 21, 1925); Société Audiffren - Singrun v. Liquidation Morlang, Binger, et Société Atlas 4 Annual Digest, p. 428, no. 294 (Civil Tribunal of Strasbourg, First Chamber, July 21, 1927).
 3. The Mavrommatis Palestine Concessions 2 Annual Digest p. 331, no. 193 (P.C.I.J. Aug. 30, 1924).
 4. Reparation Commission v. German Government 2 Annual Digest p. 334 no. 194 (Special Arbitral Tribunal, Sept. 3, 1942); Wietzenhoffer v. Germany 3 Annual Digest, p. 370, no. 282 (Roumano-German Mixed Arbitral Tribunal, Jan. 18, 1926).

latter in interpreting the treaty.¹

(g) In the Treaty of St. Germain, Art. 381 (2) stated:

"The present treaty, in French, in English, and in Italian, shall be ratified. In case of divergence the French text shall prevail, except in Parts I and XIII, where the French and English texts shall be of equal force."

In a case where neither Part I nor Part XIII was in question, the court held that all three texts must be considered together, and only when the result of this process reveals a divergence should the court adopt the text declared in the treaty to prevail.²

(h) When none of the ordinary canons of interpretation solves problems in cases of discrepancy, ambiguity or the like, the spirit of the treaty should determine the interpretation to be given to it.³

(i) One author has suggested yet another solution to the problems created by discrepancies in treaties:

"Unless the contrary is expressly provided, if a treaty is concluded in two languages, and there is a discrepancy in the meaning of the two different texts, each party is only bound by the text of its own language. Moreover, a party cannot claim the benefit of the text in the language of the other party."⁴

1. Standard Oil Company Tankers Case 3 Annual Digest p. 369, no. 281 (Arbitration between U.S. and Reparation Commission, Aug. 5, 1926)
2. Archdukes of the Hapsburg-Lorraine House v. Polish State Treasury 5 Annual Digest p. 365, no. 235 (Poland, Supreme Court, Third Division, June 16, 1930).
3. Dürrenberg v. Polish State Treasury 1 Annual Digest p. 339, no. 246 (Polish Supreme Court, Fifth Division, Sept. 29, 1922); Flegenhaimer Claim, (1958) 25 Int. L.R. 91 (Italian-Conciliation Commission, Sept. 29, 1958).
4. Oppenheim on International Law, 7th ed., by H. Lauterpacht, 1948, vol. 1, p. 867.

12.26 Specific provisions in treaty for authentic texts.-

It seems to be the practice now to provide that the texts of multilingual treaties are all equally authentic¹.

12.27 Problems with Treaties in Canadian practice.-

A treaty, in order to become enforceable, must be implemented by statute, either federal or provincial, depending upon which jurisdiction the treaty's subject matter falls under 22. 91 and 92 of the B.N.A. Act. All acts of Parliament are bilingual. The question arises, if a treaty is entered into by Canada in only one language, what is the status of the

1. e.g. North Atlantic Treaty, Art. 14; European Economic Community Treaty, Art. 248; European Economic Energy Community Treaty, Art. 225; Statute of the Council of Europe, Art. 42; United Nations Charter, Art. 111; Peace Treaties at conclusions of First World War. See also the agreement on the privileges and immunities of North Atlantic Forces, art. 27 of which states that both the French and English versions of the agreement are equally authoritative (ratified by the Privileges and Immunities (North Atlantic Treaty Organization) Act, 1952 R.S.C., c. 218); the N.A.T.O. Status of Forces Agreement, art. XX of which contains an identical provision (ratified by the Visiting Forces (North Atlantic Treaty Organization) Act, 1952, R.S.C., c. 284); the North Pacific Fisheries Convention, art. XI of which declares the English and Japanese versions to be of equal authority (ratified by the North Pacific Fisheries Convention Act, 1952-53, S.C., c. 44); the Agreement on Third Party Damage by Foreign Aircraft, art. 39 of which makes the English, French and Spanish texts of equal authority (ratified by the Foreign Aircraft Third Party Damage Act, 1955, S.C., c. 15). Similar provisions are also found in a multitude of bilateral tax agreements ratified by statutes: e.g. Canada-Netherlands Income Tax Agreement Act, 1957 (1957, 5-6 Eliz. II, c. 16) art. XXVII of the Convention (English and Dutch texts equally authoritative); Canada-South Africa Death Duties Agreement Act, 1957 (1957, 5-6 Eliz. II, c. 17) art. VIII (English and Afrikaans texts of equal authority); Canada-South Africa Income Tax Agreement Act, 1957, (1957, 5-6 Eliz. II, c. 18) art. XIII (English and Afrikaans equally authentic); Canada-Belgian Congo Income Tax Convention Act, 1958 (1958, 7 Eliz. II, c. 12) art. XX (English and French texts equal); Canada-Belgium Income Tax Convention Act, 1958 (1958, 7 Eliz. II, c. 13) art. XX (English and French of equal authority); Canada-Finland Income Tax Convention Act, 1959 (1959, 7-8 Eliz. II, c. 20) art. XX (English and Finnish texts equally authoritative); Canada-Finland Income Tax Convention Act, 1959 (1959, 7-8 Eliz. II, c. 20) art. XX (English and Finnish texts having equal force); Canada-Germany Income Tax Agreement Act, 1956 (1956, 4-5 Eliz. II, c. 33) Schedule-Convention (English and German texts equally authoritative).

translation made by Parliament, particularly if it conflicts with the official international text? The same would apply to Quebec whose statutes are all bilingual, if it entered into an international agreement in only one language. These problems have never been considered. We would venture the opinion that the original text should prevail.

E - PROVISIONS IN INTERNATIONAL AGREEMENTS
AFFECTING LINGUISTIC RIGHTS WITHIN CANADA

12.28 Introduction.-

All international agreements and exchanges of notes contained in the Canada Treaty Series have been examined with a view to determining whether their substantive content as distinguished from the language in which they are drawn affects the linguistic rights of Canadians directly or indirectly. In making this survey no ^{systematic} attempt was made to examine the official languages of several international organizations to which Canada is committed. We know that the Universal Postal Convention which organized the Universal Postal Union stipulates that the official language for all documents in the international bureau of the Postal Union is French. Many provisions can also be found about the administrative languages of international organizations or the languages for international conferences. The Geneva Convention on War Prisoners lays down certain rules as to language in prison camps¹. The Geneva Convention relative to the Protection of Civil Persons in time of War, August 12, 1949 which is approved by the Geneva Conventions Act² stipulates:

1. Section 62 of the 6th Geneva Convention (1942) provided: "Le prisonnier de guerre sera en droit d'être assisté par un défenseur qualifié de son choix et de recourir, si c'est nécessaire, aux offices d'un interprète compétent". Section 20 of the same Convention provides that the authorities of prisoners of war camps must communicate with the prisoners in the language understood by the latter.

2. 1964-65, 13-14 Eliz. II, S.C., c. 44. The Convention is annexed to the statute as Schedule IV.

"The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually, must likewise, be given in a language which they understand."¹

Other agreements such as the Fur Seal Convention of 1957 commit Canada to the use of certain languages insofar as certification of officers working under the auspices of the treaty is concerned. But the bulk of relevant provisions in Canadian international agreements are those dealing with the transmittal of legal proceedings in civil and commercial matters from one country to another. They will be examined in the next paragraph.

1. Article 99.

12.29 Transmittal of legal proceedings in civil and commercial matters.-

In 1928, by exchange of notes, Canada extended to itself the treaty between the United Kingdom and France respecting legal proceedings in civil and commercial matters.¹ Section 3 of the agreement, referring to service abroad states:

"Service

Art. 3

The request containing the name of the authority from whom the document transmitted emanates, the name and description of the parties, the address of the recipient and the nature of the document in question, shall be drawn up in one of the languages employed in the State applied to

If the document to be served is drawn up in one of the languages employed in the state applied to or is accompanied by a translation in one of such languages, should a wish to that effect be expressed in the request, shall serve the document in the manner prescribed by its municipal law

The "commission rogatoire" shall be drawn up in one of the languages of the authority applied to, or accompanied by a translation in one of those languages certified as correct by a diplomatic officer or consular officer of the State making the request, or by an official or sworn translator of one of the two states.

Note

The language in which communications to such authorities and translations are to be made is English except in the Province of Quebec where they may be made in either English or French."

This agreement obviously became the prototype of many similar

1. The text of the exchange is No. 15 for the year 1928 in the Canada Treaty Series.

agreements entered into by Canada by means of exchanges of notes. For instance, in 1935 an exchange of notes with Germany¹ provided that communications with Canadian provincial authorities should be in English except in Quebec where they may be either in English or French. Requests of service in Germany would have to be drawn up in German. Sometimes provision is made for an official translation into the official language or languages of a document to be served in another country.²

12.30 Conclusions.-

Apart from the foregoing provisions very little appears in international agreements entered into by Canada which might affect the linguistic rights or duties of Canadians.

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1. No. 11 for the year 1935 in the Canada Treaty Series.
 2. Exchange of notes with Spain, No. 12 in 1935; with Sweden, No. 13 in 1935; with Italy, No. 14 in 1935; with Norway, No. 15 in 1935; with Austria, No. 16 in 1935; with Portugal, No. 17 in 1935; with Poland, No. 18 in 1935; with Turkey, No. 19 in 1935; with the Netherlands, No. 2 in 1936; with Estonia, No. 3 in 1936; with Denmark and Iceland, No. 4 in 1936; with Finland, No. 5 in 1936; with Lithuania, No. 13 in 1936; with Belgium, No. 4 in 1937; with Czechoslovakia, No. 5 in 1937; with Greece, No. 1 in 1938; with Iraq, No. 12 in 1938; with Yugoslavia, No. 4 in 1939; with Hungary, No. 6 in 1939; with Austria, No. 3 in 1952.

Treaties and Agreements affecting Canada
in force between His Majesty and the United
States of America before 1927 (1814-1925)

Abbreviations:

E	-	English
F	-	French
S	-	Spanish
R	-	Russian
C	-	Chinese
(M.T.)	-	Multilateral Treaty
E of N	-	Exchange of Notes

The language or abbreviation following the title of a document indicates the language of the official text. If an official translation in another language was prepared with the official text, this is indicated by stating the language of such translation between brackets.

Treaties and Agreements affecting
Canada in force between His Majesty
and the United States of America
before 1927 (1814 - 1925)

1814	Treaty of Ghent	E.
1815	Convention of Commerce	E.
1817	E of N	E.
1818	Convention of Commerce	E.
1827	Convention of Commerce	E.
1842	Ashburton - Webster Treaty	E.
1846	Treaty of Washington (Oregon Boundary)	E.
1850	Bulwer Clayton Treaty	E.
1850	Protocol	E.
1870	Naturalisation Convention	E.
1871	Supplementary Naturalisation Convention	E.
1871	Treaty of Washington (Alabama Settlement)	E.
1873	Protocol	E.
1875	Convention de Paris sur le système métrique (M.T.)	F.
1877	Declaration on Trade Marks	E.
1883	Industrial Property Convention (M.T.)	F.
1884	Convention pour la protection des Câbles sous-marins	F. (E.)
1889	Supplementary Extradition Treaty	E.
1890	Convention Internationale pour la création de l'Union pour la publication des Tarifs douaniers. (M.T.)	F. (E.)

1892	Behring Sea Arbitration Treaty	E.
1892	Boundary Convention	E.
1894	Supplementary Convention to Boundary Convention	E.
1896	Behring Sea Claims Convention	E.
1899	Real and Personal Property Convention	E.
1899	Hague Convention (M.T.)	F. (E.)
1900	Act Modifying the Industrial Property Convention	F.
1901	Panama Canal Treaty	E.
1903	Alaska Boundary Treaty	E.
1904	White Slave Agreement (M.T.)	F.
1905	Extradition Treaty	E.
1905	International Convention for the Creation of an International Agricultural Institute. (M.T.)	F. (E.)
1906	Alaska Boundary Treaty	E.
1906	Red Cross Convention (M.T.)	F. (E.)
1906	International Radiotelegraphic Convention (M.T.)	F. (E.)
1907	Hague Convention (M.T.)	F. (E.)
1907	Hague Conventions on the Laws of War (M.T.)	F. (E.)
1907	International Agreement regarding a Public Health Office (M.T.)	F. (E.)

1908	International Boundary Demarcation Treaty	E.
1909	Boundary Waters Treaty	E.
1909	North Atlantic Fisheries Arbitration Agreement	E.
1910	Agreement for the Suppression of Obscene Publications	F. (E.)
1910	Boundary Treaty	E.
1910	Pecuniary Claims Agreement	E.
1910	Salvage at Sea Convention (M.T.)	F.
1911	Fur Seal Treaty	E.
1911	International Convention for the Protection of Industrial Property (M.T.)	F. (E.)
1911	Fur Seal Convention (M.T.)	E.
1912	Convention Internationale de l'Opium (M.T.)	F.
1912	International Radiotelegraph Convention (M.T.)	F.
1913	Arbitration Convention Renewal	E.
1914	Exchange of Notes - Mexico	E.
1914	Peace Commission Treaty	E.
1916	Migratory Birds Convention	E.
1918	Arbitration Convention Renewal	E.
1918	Metric Convention - Modification	F.
1921	Real and Personal Property Convention	E.
1921	Pacific Treaty	E.
1922	Naval Armament Treaty (M.T.)	E.

1922	Treaty Regarding Chinese Matters (Chinese Tariff Treaty)	E.
1922	Extradition Treaty	E.
1923	Halibut Treaty (First Treaty negotiated and signed by Canada. signed: "E. Lapointe")	E.
1923	Arbitration Convention	E.
1924	Liquor Traffic Convention	E.
1924	Treaty Regarding Narcotics	E.
1925	Boundary Demarcations Treaty (Signed: "E. Lapointe")	E.
1925	Lake of the Woods Treaty (Signed: "E. Lapointe")	E.
1924	Traité de l'Union Postale Universelle	F.

Chronological list of international agreements
and exchanges of notes made by Canada, indicating
the official language of such documents

Abbreviations:

E	-	English
F	-	French
S	-	Spanish
R	-	Russian
C	-	Chinese
(M.T.)	-	Multilateral Treaty
E of N	-	Exchange of Notes

The language or abbreviation following the title of a document indicates the language of the official text. If an official translation in another language was prepared with the official text this is indicated by stating the language of such translation between brackets. The number before the title of each document is the number given to it in the relevant volume of the Canada Treaty Series.

CANADA TREATY SERIES - RECUEIL DES TRAITES CANADIENS

	1.	Convention between H. M. and Mexico (1926)	E. S.
	2.	Convention Sanitaire Internationale (1926) (M.T.)	F.
	3.	Convention de l'Union de Paris pour la protection de la propriété industrielle (1925) (M.T.)	F.
	4.	Second Opium Convention (1925) (M.T.)	E.
	5.	International Slavery Convention (1926) (M.T.)	E.
<u>1928:</u>	6.	Convention of Commerce with Czechoslovakia	E.
	7.	E of N with Spain UK Treaty of Commerce	E.
	8.	E of N: UK Extradition Treaty with Czechoslovakia	E. Czech.
	9.	E of N - U.S.	E.
	10.	E of N - Extension to Canada of UK Extradition Treaty with Estonia	E.
	11.	E of N - Extension to Canada of UK Extradition treaty with Lithuania	E.
	12.	E of N - Latvia	E.
	13.	E of N - Finland	E.
	14.	E of N - Albania	E.
	15.	E of N - Extension to Canada of UK Treaty with France respecting legal proceedings in Civil and Commercial matters.	F. E.

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|-----|---|------|
| 1. | Convention Radio-télégraphique
internationale

(M.T.) | F. |
| 2. | E of N - U.S. | E. |
| 3. | E of N - South Africa | E. |
| 4. | E of N - U.S. | E. |
| 5. | E of N - China | E. |
| 6. | E of N - Cuba, Newfoundland, U.S. | E. |
| 7. | Treaty for the Renunciation of War | E.F. |
| 8. | E of N - Norway | E. |
| 9. | E of N - Denmark | E. |
| 10. | E of N - Japan | E. |
| 11. | E of N - Netherlands | E. |
| 12. | E of N - Greece | E. |
| 13. | E of N - U.S. | E. |
| 14. | E of N - U.S. | E. |
| 15. | Union Universelle des Postes
Convention Universelle des Postes

(M.T.) | F. |
| 16. | E of N - Sweden | E. |
| 17. | E of N - U.S.S.R. | E. |

1930

- | | | |
|-----|---|----------------|
| 1. | Postal Agreement with France | F. |
| 2. | E of N - Germany | E. |
| 3. | Protocol concernant la prohibition
de l'emploi à la guerre de Gaz asphyxiants
(M.T.) | F.E. |
| 4. | Agreement with U.K. | E. |
| 5. | Accord avec la Tchécoslovaquie
(M.T.) | F.E. |
| 6. | Arrangement - l'acceptation du Plan Young
(M.T.) | F.E. |
| 7. | Accord par la Règlement complet et définitif
des Obligations Financières de l'Allemagne
(M.T.) | F.E.
German |
| 8. | Accord Acquittant l'Autriche de ses
obligations financières
(M.T.) | F.E. |
| 9. | Déclaration d'acceptation de la clause
facultative de l'article 36 du Statut de
la CPJI par le Canada | F.E. |
| 10. | Convention Internationale concernant
les Statistiques économiques
(M.T.) | F.E. |
| 11. | Agreement between Canada and Germany | F.
German |
| 12. | Protocole par la Revision du Statut
de la C.P.J.I.
(M.T.) | F.E. |

(cont'd.)

1930 (cont'd.)

- | | | |
|-----|---|------|
| 13. | Protocole relatif à l'Adhésion
des Etats-Unis au Protocole
du Statut de la C.P.J.I. | F.E. |
| 14. | Protocole relatif à l'amendement
de la Convention de Paris

(M.T.) | F.E. |
| 15. | Protocol | E. |
| 16. | Traité Naval de Londres

(M.T.) | F.E. |
| 17. | E of N - Norway | E. |
| 18. | Accord définitif sur la réparation
de la Bulgarie | E.F. |

1931

- | | | |
|----|---|---------------|
| 1. | E of N. - Italy | E.
Italian |
| 2. | Pacific Halibut Fishing Convention
with U.S. | E. |
| 3. | International Convention for the
Protection of Literary and Artistic Works
(M.T.) | F. |
| 4. | Acte Général de 1928 pour le Règlement
Pacifique des Différends Internationaux
(M.T.) | F.E. |
| 5. | Trade Agreement with Australia | E. |
| 6. | E of N regarding Brazil | E. |
| 7. | British Commonwealth Merchant Shipping
Agreement | E. |

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- | | | |
|----|---|------|
| 1. | E of N - Italy | E. |
| 2. | Trade Agreement - between
New Zealand | E. |
| 3. | Trade agreement with U.K. | E. |
| 4. | E of N - U.S. | E. |
| 5. | International Load Line Convention
(M.T.) | E.F. |
| 6. | Conférence Internationale Pour la
Sauvegarde de la Vie Humaine en Mer 1929
(M.T.) | F.E. |
| 7. | Convention Internationale sur les
Stupéfiants
(M.T.) | E.F. |
| 8. | E of N - France | F. |

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|-----|---|------|
| 1. | E of N - Germany | E. |
| 2. | Trade Agreement - Eire | E. |
| 3. | Trade Agreement - Southern Rhodesia | E. |
| 4. | Trade Agreement - South Africa | E. |
| 5. | International Convention -
Treatment of Prisoners of War

(M.T.) | E.F. |
| 6. | International Convention -
Geneva - 1929 | F.E. |
| 7. | E of N - Germany | F. |
| 8. | Trade Agreement - New Zealand | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - Austria | E. |
| 11 | Final Act of the Conference -
Export by Countries

(M.T.) | E. |

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|-----|--|------|
| 1. | E of N - Germany | E. |
| 2. | E of N - Austria | E. |
| 3. | International Telecommunication
Convention

(M.T.) | F. |
| 4. | Agreements Regarding Silver

(M.T.) | E. |
| 5. | E of N - U.S. | E. |
| 6. | Trade Agreement - N.Z. | E. |
| 7. | Convention Relating to International
Exhibitions

(M.T.) | F. |
| 8. | Arrangement International relatif
aux Statistiques des Causes de
Décès

(M.T.) | E.F. |
| 9. | E of N - U.S. | E. |
| 10. | Load-line Convention - U.S. | E. |
| 11. | E of N - Roumania | E. |
| 12. | Universal Postal Convention

(M.T.) | F. |

1935

- | | | |
|-----|--|-----------------|
| 1. | Agreement - U.K. | E. |
| 2. | E of N - Commonwealth & Iceland | E. |
| 3. | E of N - Austria | E. |
| 4. | E of N - Roumania | E. |
| 5. | E of N - Haiti | E. |
| 6. | Convention on Turnage Measurement | E.
Polish |
| 7. | Convention concernant l'Echange
des Mandats de Poste avec la
France | E.F. |
| 8. | E of N - South Africa | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - Haiti | F. |
| 11. | E of N and Convention with
Germany regarding Legal Proceedings
in Civil and Commercial Matters | E.
German |
| 12. | E of N - Convention between
H.M. and Spain regarding Legal
Proceedings | E.
Spanish |
| 13. | E of N and Convention with
Sweden on Legal Proceedings | E.
Swedish |
| 14. | E of N and Convention with Italy on
Legal Proceedings | E.
Italian |
| 15. | E of N and Convention with Norway on
Legal Proceedings | E.
Norwegian |
| 16. | E of N and Convention with
Austria on Legal Proceedings | E.
German |
| 17. | E of N with Portugal way
Convention on Legal Proceedings | E.
Portugese |
| 18. | E of N and Convention with
Poland on Legal Proceedings | E.
Polish |

(cont'd.)

APPENDIX XII-B (11)

1935 (cont'd.)

- | | | |
|-----|--|--------------------|
| 19. | E of N and Convention with Turkey
on Legal Proceedings | E.
Turkish |
| 20. | Convention with U.S. - Trail Smelter | E. |
| 21. | Trade Agreement on the N.Z. | E. |
| 22. | Agreement of Commonwealth and
France and Germany in on War Graves | F.
E.
German |
| | (M.T.) | |
| 23. | Convention - la Chasse à la Baleine
(M.T.) | E.F. |

1936

1. E of N with Japan E.
2. E of N and Convention with Netherlands on Legal Proceedings E.
Dutch
3. E of N - Convention with Estonia on Legal Proceedings E.
4. E of N - Convention with Denmark and Iceland on Legal Proceedings E.
Danish
5. E of N and Convention with Finland on Legal Proceedings E.
Finnish
Swedish
6. Agreement - Japan Japanese
7. E of N - Haiti E.
8. Agreement of Commonwealth Iraq in War Cemeteries E.
(M.T.)
9. Trade Agreement with U.S. E.
10. E of N with U.S. E.
11. Trade Agreement with N.Z. E.
12. E of N with Poland E.
13. E of N - Convention with Lithuania on Legal Proceedings E.
Lithuanian
14. E of N Commercial Agreement with Uruguay E.
15. Convention of Commerce with Poland E.
Polish
16. International Dispensing with visas on Bills of Health F.
(M.T.)
17. Procès-verbal concernant les Règles de la guerre sous-marine E.F.
(M.T.)
18. Convention - France E.F.
19. Payments Agreement - Germany E.
German

1937

- | | | |
|-----|--|--------------|
| 1. | E of N with Iceland | E. |
| 2. | E of N with Germany | German |
| 3. | E of N with Haiti | E. |
| 4. | E of N with Belgium and
Supplementary Convention relative
to legal Proceedings in Civil
and Commercial matters | E.F. |
| 5. | E of N with Czechoslovakia and
Supplementary Convention relative
to legal Proceedings in Civil
and Commercial matters | E.
Czech. |
| 6. | E of N - Brazil | E. |
| 7. | Convention Multilatérale concernant
les conflits de lois sur la Nationalité

(M.T.) | E.F. |
| 8. | E of N - U.S. | E. |
| 9. | Convention with U.S.
re: Halibut Fisheries | E. |
| 10. | Sockeye Salmon Fisheries
Convention with U.S. | E. |
| 11. | Naval Armaments Treaty

(M.T.) | E.F. |
| 12. | E of N - France | F. |
| 13. | Convention with U.S. | E. |
| 14. | Trade Agreement with U.K. | E. |
| 15. | Trade Agreement with New Zealand | E. |
| 16. | Postal Convention of the Americas and
Spain

(M.T.) | S. |
| 17. | E of N - Guatemala | E. |
| 18. | E of N - Salvador | E. |
| 19. | E of N - U.S. | E. |

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|-----|--|--------------|
| 1. | E of N - France | F. |
| 2. | E of N - Netherlands | E. |
| 3. | Protocol
(M.T.) | E. |
| 4. | E of N - Uruguay | S.E. |
| 5. | B.I.T. Projet de Convention concernant
le Contrat d'engagement des Marins
(M.T.) | E.F. |
| 6. | B.I.T. Projet de Convention
(M.T.) | E.F. |
| 7. | E of N - U.S. | E. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | E of N and Convention with
Greece on Legal Proceedings | E.
Greek |
| 12. | E of N and Convention with Iraq
re Legal Proceedings | E.
Arabic |
| 13. | E of N - New Zealand | E. |
| 14. | Convention concernant l'Abolition
en Egypte
(M.T.) | E.F. |
| 15. | E of N - Uruguay | E. |
| 16. | Accord Commercial - Haiti | E.F. |
| 17. | Arrangement Interaméricain de
Radio communications
(M.T.) | E.F.S. |

(cont'd.)

1938 (cont'd.)

- | | | |
|-----|---|------|
| 19. | Convention avec la France
Monuments de la Guerre de 1914-18

(M.T.) | E.F. |
| 20. | E of N - U.S. | E. |
| 21. | International Agreement for the
Regulation of Whaling

(M.T.) | E. |
| 22. | E of N - U.S. | E. |
| 23. | International Agreement Establishing
the International Institute of
Refrigeration

(M.T.) | E. |
| 24. | Agreement with Egypt
British War Cemetery | E. |
| 25. | E of N - Bulgaria | E. |

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|-----|--|-----------------|
| 1. | E of N - U.K. on
Trade Agreement | E. |
| 2. | E of N - South Africa | E. |
| 3. | Trade Agreement with Guatemala | E.
S. |
| 4. | E of N and Convention with
Yugoslavia on Legal Proceedings | E.
Yugoslav |
| 5. | E of N - U.S. | E. |
| 6. | E of N and Convention
between H.M. and Hungary
on Legal Proceedings | E.
Hungarian |
| 7. | E of N - Uruguay | E. |
| 8. | Trade Agreement with U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | Trade Agreement - New Zealand | E. |
| 12. | Convention de 1936 pour la
Répression du Trafic Illicite
Les Drogues Nuisibles -
Protocole - Acte Final

(M.T.) | E.F. |
| 13. | E of N - U.S. | E. |

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|-----|---|----------|
| 1. | Protocol - Revision of the
nomenclature of the causes
of death

(M.T.) | E. |
| 2. | E of N - U.S. | E. |
| 3. | E of N - U.S. | E. |
| 4. | Trade Agreement with Uruguay | E.
S. |
| 5. | E of N with U.S. | E. |
| 6. | Commercial Arrangement with Paraguay | E. |
| 7. | Convention Postale Universelle

(M.T.) | E.F. |
| 8. | Agreement with New Zealand | E. |
| 9. | Convention with U.S. on Rainy Lake | E. |
| 10. | Agreement with U.K.
re Wormen's Compensation | E. |
| 11. | E of N - U.S. | E. |
| 12. | E of N - re Rush - Bagot Agreement(1817) | E. |
| 13. | E of N - U.S. re Air Transport | E. |
| 14. | Declaration of Prime Minister and
President on Establishing a
Permanent Joint Defense Board | E. |
| 15. | E of N - U.S. | E. |

1 9 4 1

(From this date on all Treaties are published in the Canada Treaty Series in English and French, but often the French text is a translation prepared for publication only.)

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|-----|--|----------------|
| 1. | Accord Commercial-
La République Dominicaine | E. |
| 2. | Protocole - Royaume-Uni et les E.U.
(M.T.) | E. |
| 3. | Accord Régional de Radiodiffusion
de l'Amérique du Nord

(M.T.) | E.
F.
S. |
| 4. | E of N - U.S. | E. |
| 5. | E of N - Venezuela | E.
S. |
| 6. | E of N - U.S. | E. |
| 7. | E of N - U.S. | E. |
| 8. | Protocol | E. |
| 9. | Treaty with U.S. | E. |
| 10. | Commercial Agreement with U.S. | E. |
| 11. | E of N - U.S. | E. |
| 12. | Commercial Agreement with New Zealand | E. |
| 13. | E of N - Ecuador | S. |
| 14. | Ogdensberg Declaration | E. |
| 15. | E of N - U.S. | E. |
| 16. | Commercial Agreement with Chili | E.
S. |
| 17. | Commercial Agreement with Argentina | E.
S. |
| 18. | Commercial Agreement with Brazil | E.S. |
| 19. | E of N - U.S. | E. |
| 20. | E of N - U.S. | E. |

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|-----|---|---------------------------------------|
| 1. | Declaration of the United Nations
(M.T.) | E. |
| 2. | Convention and Protocol with U.S. | E. |
| 3. | E of N - U.S. | E. |
| 4. | E of N - U.S. | E. |
| 5. | E of N - U.S. | E. |
| 6. | Conventions relatives aux Prisonniers
de Guerre
I Genève 1864
II La Haye 1899
III La Haye 1907
IV La Haye 1907
V Genève 1929
VI Genève - | F.
(with official
translations) |
| 7. | E of N -U.S. | E. |
| 8. | E of N - VENEZUELA | E. |
| 9. | Accord avec URSS | E. |
| 10. | Traité avec les E.U. pour l'Extradition
des malfaiteurs | E. |
| 11. | E of N - Mémoire d'Accord
sur le blé | E.
S. |
| 12. | Accord sur l'Etablissement des
Relations Diplomatiques avec URSS | E. |
| 13. | E of N - U.S. | E. |
| 14. | E of N - U.S. | E. |
| 15. | E of N - Chili | E. |
| 16. | E of N - U.S. | E. |
| 17. | E of N - U.S. | E. |

(cont'd.)

1942 (cont'd.)

18.	E of N - U.S.	E.
19.	E of N - Newfoundland	E.
20.	E of N - U.S.	E.
21.	E of N - U.S.	E.
22.	E of N - U.S.	E.
23.	E of N - U.S.	E.
24.	E of N - U.S.	E.
25.	E of N - U.S.	E.
26.	E of N - U.S.	E.

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|-----|--|---------------------|
| 1. | Declaration of U.N. on Forced Dispossession
of Property in Enemy Controlled Territory | E.
F. |
| | (M.T.) | |
| 2. | E of N - U.S. | E. |
| 3. | E of N - U.S. | E. |
| 4. | E of N - U.S. | E. |
| 5. | Inter-American Agreement on
Radio-Communications | E.F.S.
Portugese |
| | (M.T.) | |
| 6. | E of N - Venezuela | E. |
| 7. | E of N - U.K. | E. |
| 8. | E of N - U.K. | E. |
| 9 | E of N - Newfoundland | E. |
| 10. | E of N - U.S. | E. |
| 11. | E of N - U.S. | E. |
| 12. | E of N - U.S. | E. |
| 13. | E of N - U.S. | E. |
| 14. | E of N - U.K. | E. |
| 15. | E of N - U.S. | E. |
| 16. | Agreement for U.N. Relief and Rehabilitation
Administration | E. |
| | (M.T.) | |
| 17. | E of N - U.S. | E. |
| 18. | E of N - U.S. | E. |
| 19. | E of N - U.S. | E. |
| 20. | E of N - Newfoundland | E. |
| 21. | Armistice - Italy | E. |
| | (M.T.) | |

(Official Translations
also)

1 9 4 4

1.	E of N - U.S.	E.
2.	E of N - U.S.	E.
3.	Agreement - U.K.	E.
4.	Agreement - U.S.S.R.	E.
5.	Agreement - Australia	E.
6.	E of N - Newfoundland	E.
7.	E of N - Mexico	E.
8.	E of N - Newfoundland	E.
9.	Agreement - China	E.
10.	E of N - U.S.	E.
11.	Treaty - China	E. C.
12.	Agreement with French Committee on National Liberation	E.F.
13.	E of N - U.S.	E.
14.	E of N - Newfoundland	E.
15.	E of N - Brazil	E.
16.	E of N - U.S. in N.W.T.	E.
17.	Convention - U.S.	E.
18.	Agreement - New Zealand	E.
19.	E of N. - U.S.	E.
20.	Protocol Amending Whaling Agreement (M.T.)	E.
21.	E of N - U.S.	E.
22.	E of N - U.S.	E.

(cont'd.)

1944 (cont'd.)

- | | | |
|-----|---|----------------|
| 23. | E of N - U.S. | E. |
| 24. | E of N - U.S. | E. |
| 25. | E of N - U.S. | E. |
| 26. | E of N - U.S. | E. |
| 27. | E of N - South Africa | E. |
| 28. | International Agreement on Principles
Having Reference to the Continuance of
Coordinated Control of Merchant Shipping

(M.T.) | E.F. |
| 29. | Protocol - U.K. and U.S.S.R.

(M.T.) | E.
R. |
| 30. | Memorandum of Agreement - Newfoundland | E. |
| 31. | Agreement - India | E. |
| 32. | International Sanitary Convention -
Amending 1926 Convention

(M.T.) | E.F. |
| 33. | International Sanitary Convention for
Aerial Navigation

(M.T.) | E.F. |
| 34. | E of N - U.S. | E. |
| 35. | E of N - U.S. | E. |
| 36. | Final Act of the International Civil
Aviation Conference - and Related
Agreements - Chicago

(M.T.) | E.
F.
S. |
| 37. | Final Act of the U.N. Monetary and Financial
Conference

(M.T.) | E. |
| 38. | Armistice - Finland | E.
R. |

(cont'd.)

1944 (cont'd.)

39.	Armistice - Bulgaria	E.R.
40.	Armistice - Roumania	E.R.
41.	E of N - Venezuela	E.

1945

- | | | |
|-----|---|--|
| 1. | E of N - U.S. | E. |
| 2. | E of N - U.S. | E. |
| 3. | E of N - U.S. | E. |
| 4. | E of N - Brazil | E. |
| 5. | E of N - Newfoundland | E. |
| 6. | E of N - Mexico | E. |
| 7. | Charter of the United Nations and
Statute of International Court of
Justice | E.
R.
S.
C. |
| 8. | E of N - Czechoslovakia | E. |
| 9. | Agreement - U.K. | E. |
| 10. | Agreement - U.K. | E. |
| 11. | Agreement - Australia | E. |
| 12. | Treaty & Protocol for the
Extradition of Criminals with U.S. | E. |
| 13. | Declaration on Atomic Energy
Canada - U.S. - U.K.

(M.T.) | E. |
| 14. | Agreement on Telecommunications

(M.T.) | E. |
| 15. | Acts of German Military Surrender

(M.T.) | E.R.
(Official German
translation) |
| 16. | Declaration Regarding the Defeat of Germany
U.S.- U.K. - U.S.S.R. - France

(M.T.) | E.F.R.
(Official German
translation) |
| 17. | Agreement - U.K. | E. |
| 18. | Final Act of Unesco Conference

(M.T.) | E.F. |

(cont'd.)

1945 (cont'd.)

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|-----|---|------|
| 19. | Instrument of Japan's Surrender
(M.T.) | E. |
| 20. | Armistice Agreement - Hungary | E. |
| 21. | Acts of International Whaling Conference
(M.T.) | E. |
| 22. | Financial Agreement - Belgium | E. |
| 23. | Final Act of the Paris Conference in
Reparations
(M.T.) | E.F. |
| 24. | E of N - France | F. |
| 25. | Financial Agreement - Czechoslovakia | E. |
| 26. | E of N - South Africa | E. |
| 27. | Financial Agreement - Norway | E. |
| 28. | Financial Agreement - Netherlands | E. |
| 29. | Agreement with Czechoslovakia | E. |
| 30. | Commonwealth Agreement - U.S.S.R. on
War Prisoners
(M.T.) | E. |
| 31. | Financial Agreement with Netherlands
Indies | E. |
| 32. | Constitution of the F.A.O.
(M.T.) | E. |
| 33. | E of N - Venezuela | E. |

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|-----|--|------|
| 1. | E of N - U.S. | E. |
| 2. | T.L.O. Convention concerning Statistics
of Wages and hours of Work

(M.T.) | E.F. |
| 3. | I.L.O. Convention concerning the Protection
against Accidents of Workers employed in
loading and unloading ships

(M.T.) | E.F. |
| 4. | Trade Agreement with Mexico | E.S. |
| 5. | E of N - New Zealand | E. |
| 6. | E of N - Netherlands | E. |
| 7. | Trade Agreement - Columbia | E.S. |
| 8. | Interim Agreements to Regulate
Broadcasting in North America

(M.T.) | E.S. |
| 9. | Financial Agreement - U.K. | E. |
| 10. | Agreement - U.K. on War Claims | E. |
| 11. | E of N - Newfoundland | E. |
| 12. | E of N - U.S. | E. |
| 13. | Great Lakes Fisheries Convention - U.S. | E. |
| 14. | Financial Agreement - France | E.F. |
| 15. | Agreement - Newfoundland | E. |
| 16. | E of N - France | E. |
| 17. | Agreement - U.K. | E. |
| 18. | Agreement - U.K. | E. |
| 19. | Financial Agreement - Netherlands | E. |
| 20. | Financial Agreement - China | E. |
| 21. | Financial Agreement - Belgium | E. |
| 22. | Agreement - Australia | E. |

(cont'd.)

1946 (cont'd.)

23.	Protocol to prolong the International Sanitary Convention (M.T.)	E.F.
24.	Protocol to prolong the International Convention Aerial Navigation (M.T.)	E.F.
25.	E of N - S.A.	E.
26.	E of N - Newfoundland	E.
27.	E of N - South Africa	E.
28.	Instrument for the Amendment of the I.L.O. Constitution (M.T.)	E.F.
29.	Supplementary Protocol To Whaling Agreement (M.T.)	E.
30.	Agreement - U.K.	E.
31.	E of N - U.S.	E.
32.	Acts of the International Health Conference W.H.O. Constitution	E.F.S. R.C.
33.	E of N - Belgium	E.
34.	Agreement - Newfoundland	E.
35.	E of N - Venezuela	E.
36.	E of N - South Africa	E.
37.	E of N - China	E.
38.	E of N - Australia	E.
39.	E of N - South Africa	E.
40.	E of N - U.S.	E.
41.	E of N - U.S.	E.

(cont'd.)

1946 (cont'd.)

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|-----|--|-----------------------------------|
| 42. | E of N - U.S. | E. |
| 43. | Trade Agreement - Nicaragua | S.E. |
| 44. | Agreement - U.K. | E. |
| 45. | International Agreement on N. Atlantic
Weather Stations

(M.T.) | E.F.S. |
| 46. | Final Act of the Conference on
German-owned Patents

(M.T.) | E.F. |
| 47. | Constitution of the International Refugee
Organization

(M.T.) | E.F.S.
R.C. |
| 48. | Constitution of the I.L.O.

(M.T.) | E.F. |
| 49. | Protocol concerning F.A.O.

(M.T.) | E.F. |
| 50. | Protocol amending the Narcotics Convention

(M.T.) | E.F.

(R.S.C. translations) |
| 51. | E of N - U.S. | E. |
| 52. | Convention - revising I.L.O. Conventions

(M.T.) | E.F. |
| 53. | E of N - Netherlands | E. |
| 54. | Acts of International Whaling Conference

(M.T.) | E. |
| 55. | Agreement - Czechoslovakia | E. |

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|-----|--------------------------------------|---|
| 1. | Index | |
| 2. | Treaty of Spitzbargen
(M.T.) | E. |
| 3. | E of N - U.S. | E. |
| 4. | Treaty of Peace - Italy
(M.T.) | F.E. |
| 5. | Treaty of Peace - Hungary
(M.T.) | R.E.

(Hungarian and French translations) |
| 6. | Treaty of Peace - Roumania
(M.T.) | E.
(Roumanian translation) |
| 7. | Treaty of Peace - Finland
(M.T.) | E.R.

(F. and Finnish translations) |
| 8. | E of N - South Africa | E. |
| 9. | Financial Agreement - Netherlands | E. |
| 10. | E of N - Belgium | E. |
| 11. | E of N - U.S. | E. |
| 12. | Air Agreement - Portugal | E.
Polish |
| 13. | Agreement - ICAO
(M.T.) | E. |
| 14. | Financial Agreement | E. |
| 15. | Convention on Air Carriage
(M.T.) | F.
(E.) |
| 16. | Air Agreement - Sweden | E. |
| 17. | Air Agreement - U.K. | E. |

(cont'd.)

1947 (cont'd.)

18.	E of N - Venezuela	E.
19.	Air Agreement - Ireland	E.
20.	E of N - France	F.
21.	E of N - Greece	E.
22.	Protocol - Chicago Convention (M.T.)	E.F.S.
23.	Financial Agreement with France	E.F.
24.	Protocol	E.
25.	E of N - U.S.	E.
26.	E of N - Switzerland and U.K.	E.F.
27.	Final Act of U.N. Conference on Trade and Employment - Several Agreements on Tariffs and Trade (M.T.)	E.F.
28.	E of N - France	F.
29.	Prefer-American Telecommunication Convention	E.F.S. Portugese
30.	E of N - U.S.	E.
31.	Financial Agreement	E.
32.	Financial Agreement - Czechoslovakia	E.
33.	I. Telecommunications Convention (M.T.)	F.
34.	Convention of the Union Intertrological Organization (M.T.)	E.F.
35.	Agreement re: German assets	E.F.
36.	E of N - U.S.	E.
37.	E of Letters - U.K.	E.
38.	Protocol on German Patents	E.F. (cont'd.)

1947 (cont'd.)

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|-----|---|-------------------|
| 39. | Protocol amending Whaling Agreement
(M.T.) | E. |
| 40. | Universal Postal Convention
(M.T.) | E.F. |
| 41. | Convention of the Postal Union of
the Americas and Spain
(M.T.) | S.E.
Portugese |
| 42. | E of N - U.S. | E. |
| 43. | Joint Statements of
Canada and U.S. on Defence | E. |

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|-----|--|--------|
| 1. | E of N - U.S. | E. |
| 2. | Convention on the Privileges of U.N.
(M.T.) | 5 U.N. |
| 3. | International Wheat Agreement
(M.T.) | E.F. |
| 4. | Agreement with New Zealand | E. |
| 5. | E of N - Turkey | E. |
| 6. | E of N - U.S. | E. |
| 7. | E of N - U.S. | E. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - Italy | E. |
| 10. | E of N - U.S. | E. |
| 11. | Agreement with France on Industrial
Property Rights affected by the war | E.F. |
| 12. | Protocols
(M.T.) | E.F. |
| 13. | E of N - Venezuela | E. |
| 14. | Agreement - Netherlands | E. |
| 15. | E of N - Ireland | E. |
| 16. | Protocol to Paris Agreements on Germany
(M.T.) | E.F. |
| 17. | Final Act of I.C.A.O. Conference
(M.T.) | E.F. |
| 18. | E of N with U.K. | E. |
| 19. | Agreement on occupied Germany
(M.T.) | E.F. |
| 20. | E of N - U.S. | E. |

(cont'd.)

1948 (cont'd.)

- | | | |
|-----|---|-------------------------|
| 21. | Declaration of Accord on Screw Threads
(M.T.) | E. |
| 22. | Bern Convention for the Protection
of Library and Artistic Works
(M.T.) | F. |
| 23. | Protocol amending the International
Convention on Industrial Statistics
of 1928 | E.F.
(trans.:S.R.C.) |
| 24. | E of N - Netherlands | E. |
| 25. | E of N - Finland | E. |
| 26. | Agreement Canada - U.N.
Children's Appeal | E. |
| 27. | E of N - Allied Powers, Switzerland | F.E. |
| 28. | Financial Agreement with Belgium | E.F. |
| 29. | Agreement with Yugoslavia
Compensation for Nationalisation | E. |
| 30. | Additional Protocols - G.A.T.T.
(M.T.) | E.F. |
| 31. | General Agreement on Tariffs
& Trades - as amended.
(M.T.) | E.F. |
| 32. | Final Act of UN
Conference on Trade and Employment
(M.T.) | 5 U.N. |
| 33. | E of N - U.S. | E. |
| 34. | Protocol - International Control of Drugs
(M.T.) | 5 U.N. |
| 35. | E of N - U.S. | E. |

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1.	E of N - Belgium	F.
2.	E of N - U.S.	E.
3.	E of N - Turkey	F.
4.	E of N - Denmark	E.
5.	E of N - Argentina	S.
6.	E of N - U.S.	E.
7.	North Atlantic Treaty (M.T.)	E.F.
8.	E of N - U.S.	E.
9.	E of N - U.S.	E.
10.	International Wheat Agreement (M.T.)	E.F.
11.	E of N - Netherlands	E.
12.	Agreement - North Atlantic Weather Stations (M.T.)	E.F.S.
13.	Final Act of ICAO Conference (M.T.)	E.F.
14.	Air Transport Agreement - U.S.	E.
15.	E of N - U.S.	E.
16.	E of N - U.S.	E.
17.	E of N - U.S.	E.
18.	E of N - South Africa	E.
19.	E of N - Sweden	E.
20.	E of N - Sweden	E.
21.	Agreement - U.K.	E.

(cont'd.)

APPENDIX XII-B (36)

1949 (cont'd.)

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|-----|---|--------|
| 22. | Agreement - Belgium | E.F. |
| 23. | E of N - Belgium | E. |
| 24. | Agreement - Denmark | E. |
| 25. | E of N - Luxembourg | F. |
| 26. | E of N - Netherlands | E. |
| 27. | Convention on the Prevention and
Punishment of the Crime of Genocide
(M.T.) | 5 U.N. |

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|-----|---|-----------------------|
| 1. | Air Agreement - Norway | E. |
| 2. | Revision of Telecommunications Agreement - U.S. Commonwealth (M.T.) | E. |
| 3. | Treaty - U.S. on Niagara River | E. |
| 4. | E of N - Norway | E. |
| 5. | Convention on Halibut Fishing - U.S. | E. |
| 6. | E of N - Denmark | E. |
| 7. | E of N - France | F. |
| 8. | E of N - Norway | E. |
| 9. | E of N - Yugoslavia | E. |
| 10. | International Convention on Northwest Atlantic (M.T.) | E. |
| 11. | E of Letters - U.S. | E. |
| 12. | Protocole - l'Union des Tarifs Douaniers (M.T.) | F. |
| 13. | Air Agreement - France | E.F. |
| 14. | Air Agreement - New Zealand | E. |
| 15. | E of N - U.S. | E. |
| 16. | E of N - Venezuela | Letter S.
Reply E. |
| 17. | E of N - South Africa | E. |
| 18. | E of N - U.S.S.R. | E. |
| 19. | Final Act - UN Technical Assistance Conference (M.T.) | E.F.S. |
| 20. | E of N - Costa Rica | E. |
| 21. | E of N - Ecuador | E. |

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|-----|---|---------------|
| 1. | E of N - India | E. |
| 2. | Convention with France | F. |
| 3. | E of N - U.S. | E. |
| 4. | E of N - U.S. | E. |
| 5. | E of N - Turkey | F. |
| 6. | G.A.T.T.
(M.T.) | E.F. |
| 7. | Agreement with ICAO
(M.T.) | E.F. |
| 8. | Agreement on Claims to Germany Every Assets | E. |
| 9. | E of N - U.S. | E. |
| 10. | London Revision of I. Convention
(M.T.)

Revision de Londres de la Convention sur la Protection de la Propriété Industrielle
(M.T.) | F. |
| 11. | E of N - Eire | E. |
| 12. | Agreement of Belgium and Commonwealth | E.F. |
| 13. | Agreement with Sweden | E.
Swedish |
| 14. | E of N - U.S. | E. |
| 15. | E of N - South Africa | E. |
| 16. | Agreement - Commonwealth & Netherlands
(M.T.) | E.
Dutch |
| 17. | E of N - France | E. |

(cont'd.)

1951 (cont'd.)

18.	E of N - Pakistan	E.
19.	E of N - U.K.	E.
20.	ILO Convention on the Organization of the Employment Service	E.F.
21.	E of N - Pakistan	E.
22.	E of N - U.S.	E.
23.	E of N - U.S.	E.
24.	E of N - Venezuela	E.
25.	Agreement with India	E.
26.	Air Agreement with Australia	E.
27.	E of N - France	F.
28.	E of N - Ceylon	E.
29.	Agreement with U.K.	E.
30.	Agreement - U.K. and Commonwealth - France (M.T.)	E.F.
31.	E of N - U.S.	E.
32.	Protocol amending I. Agreement on White Slavery	E.F.
33.	Protocol (M.T.)	5 UN
34.	Protocol (M.T.)	5 UN
35.	E of N - Trail Smelter Arbitration	E.
36.	E of N - U.S.	E.
37.	E of N - U.S.	E.
38.	E of N - South Africa	E.

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|-----|---|---------------------------|
| 1. | E of N - South Africa | E. |
| 2. | E of N - Spain | E. |
| 3. | E of N - Convention with Austria
on Legal Proceedings in Civil and
Commercial matters | E. |
| 4. | Treaty of Peace with Japan | E.F.
(Japanese trans.) |
| 5. | E of N - Monaco | F. |
| 6. | E of Letters - U.S. | E. |
| 7. | Convention with U.S. | E. |
| 8. | NATO - Accession of Greece and Turkey
(M.T.) | E.F. |
| 9. | E of Letters - Netherlands | E. |
| 10. | Protocol extending the Atlantic Weather
Stations Agreement
(M.T.) | E.F.S. |
| 11. | E of N - U.K. - Tax | E. |
| 12. | Amendment to Extradition Convention
with U.S.
(All previous treaties listed) | E. |
| 13. | E of N - U.S. | E. |
| 14. | Agreement with U.S. | E. |
| 15. | Air Agreement with New Zealand | E. |
| 16. | Agreement with Japan
(M.T.) | E.F.S.
Japanese |
| 17. | Final Act of U.N. Technical Assistance
Conference | E.F.S. |
| 18. | E of N - Italy | E. |
| 19. | Supplementing Telecommunications
Agreement
(M.T.) | E. |

(cont'd.)

1952 (cont'd.)

20.	International Convention for the Safety of Life at Sea (M.T.)	E.F.
21.	E of N - Italy	E.
22.	Agreement with U.S. in Defence	E.
23.	E of N - Ceylon	E.
24.	E of N - Egypt	E.
25.	Agreement with U.S.	E.
26.	E of N - U.S.	E.
27.	E of N - U.S.	E.
28.	Protocol re German Enemy Assets	E.F.
29.	ILO Seamen Convention (M.T.)	E.F.
30.	E of N - U.S.	E.
31.	ILO Convention on the Age of Employment At Sea (M.T.)	E.F.
32.	E of N - South Africa	E.
33.	E of N - U.S.	E.
34.	E of N - South Africa	E.
35.	E of N - Venezuela	E.
36.	E of N - U.S.	E.

1953

- | | | |
|-----|--|-----------------|
| 1. | E of N - U.S. | E. |
| 2. | Agreement of German
External Debts

(M.T.) | E.F.
German |
| 3. | International Convention for the High
Sea Fishing of the N. Pacific

(M.T.) | E. |
| 4. | Final Act - UN Technical
Assistance Conference

(M.T.) | E.F.S. |
| 5. | Agreement - Italy

(M.T.) | E.F.
Italian |
| 6. | E of N - U.K. | E. |
| 7. | Income Tax Agreement - France | E.F. |
| 8. | Succession Tax Agreement - France | E.F. |
| 9. | E of N - India | E. |
| 10. | E of N - U.K. | E. |
| 11. | E of N - Mexico | E. |
| 12. | NATO: Status of Forces Agreement

(M.T.) | E.F. |
| 14. | Halibut Fishing Convention - U.S. | E. |
| 15. | Defence Agreement - Belgium | E.F. |
| 16. | International Plant Protection Convention

(M.T.) | E.F.S. |
| 17. | E of N and Convention on Legal Proceedings
with W. Germany | E. |
| 18. | E of N - US Trade | E. |

(cont'd.)

1953 (cont'd.)

19.	E of N - W. Germany	German
20.	E of N - U.S.	E.
21.	E of N - U.S.	E.
22.	Finance Agreement - U.K.	E.
23.	International Wheat Agreement Renewal (M.T.)	E.F.S.
24.	ILO: Convention on Ships' Cooks (M.T.)	E.F.
25.	E of N - U.S.	E.
26.	Protocol: International Slavery Convention (M.T.)	E.F. (trans.:S.R.C.))
27.	Protocol - UN Forces in Japan (M.T.)	Japanese E.
28.	E of N - Venezuela	E.
29.	E of N - South Africa	E.
30.	E of N - South Africa	E.

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|-----|---|---------------------------------|
| 1. | NATO Status of Representation and
I. Staff

(M.T.) | E.F. |
| 2. | (M.T.) | E.
Danish |
| 3. | Commercial Agreement - Japan | E.
Japanese |
| 4. | I. Agreement on Cultural Relations | E.F. |
| 5. | Instrument amending ILO Constitution | E.F. |
| 6. | E of N - U.S. | E. |
| 7. | E of N - U.S. | E. |
| 8. | I. Telecommunication Convention | (5 UN)
French text authentic |
| 9. | Instrument of Acceptance -
Constitution of the Inter-
governmental Committee on
European Immigration

(M.T.) | E.F. |
| 10. | Instrument of I. Regulations for
preventing collisions at sea | E.F. |
| 11. | International Sugar Agreement

(M.T.) | 5 UN |
| 12. | E of N - U.S. | E. |
| 13. | Agreement on Statuary of UN forces
in Japan

(M.T.) | Japanese
E. |
| 14. | E of N - U.S. | E. |
| 15. | E of N - South Africa | E. |
| 16. | E of N - South Africa | E. |

1 9 5 5

- | | | |
|-----|---|-----------------|
| 1. | Air Agreement with Peru | E.S. |
| 2. | Commonwealth Agreement with Egypt
(M.T.) | E. |
| 3. | Agreement on North Atlantic Ocean Stations
(M.T.) | E.F. |
| 4. | Agreement with Portugal | E.
Portugese |
| 5. | Agreement with Commonwealth and Italy
(M.T.) | E.
Italian |
| 6. | Protocol - Accession of
West Germany to NATO
(M.T.) | E.F. |
| 7. | Convation on Forces in West Germany
(M.T.) | E.F. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - Japan | E. |
| 11. | E of N - Ethiopia | E. |
| 12. | Agreement with Spain | E.S. |
| 13. | Agreement with U.S. | E. |
| 14. | Air Agreement with Japan | E.
Japanese |
| 15. | Atomic Energy Agreement with U.S. | E. |
| 16. | Atomic Energy Agreement with U.S. | E. |
| 17. | E of N - Israel | E. |
| 18. | E of N - U.S. | E. |

(cont'd.)

1955 (cont'd.)

19.	Convention with U.S. on Great Lakes Fisheries	E.
20.	E of N - U.S.	E.
21.	E of N - Mexico	E.
22.	Income Tax Agreement with Eire	E.
23.	Succession Tax Agreement with Eire	E.
24.	E of N - France	E.
25.	E of N - Norway	E.
26.	E of N - Venezuela	E.
27.	War Graves Agreement Commonwealth - Iraq (M.T.)	E. Arabic
28.	E of N - U.S.	E.
29.	E of N - U.S.	E.
30.	E of N - U.S.	E.
31.	Refrigeration Agreement (M.T.)	E.F.
32.	ILO Convention on Seafarers (M.T.)	E.F.
33.	E of N - South Africa	E.
34.	E of N - South Africa	E.
35.	E of N - South Africa	E.

1 9 5 6

- | | | |
|-----|--|----------------|
| 1. | Trade Agreement with U.S.S.R. | E.R. |
| 2. | E of N - Hungary | E. |
| 3. | E of N - Finland | E. |
| 4. | NATO - Atlantic Information Agreement
(M.T.) | E.F. |
| 5. | International Wheat Agreement
(M.T.) | E.F.S. |
| 6. | E of N - U.S. | E. |
| 7. | Income Tax Agreement with Norway | E. |
| 8. | War Graves Agreement with Japan | E.
Japanese |
| 9. | International Tin Agreement
(M.T.) | E.F.S. |
| 10. | E of N - Spain | E. |
| 11. | E of N - Belgium | E. |
| 12. | Agreement on Ice Patrol
(M.T.) | E. |
| 13. | E of N - U.S. | E. |
| 14. | E of N - Austria | E. |
| 15. | Patents Agreement with India | E. |
| 16. | Agreement in Industrial Finance
Corporation
(M.T.) | E. |
| 17. | Accord avec la France sur les
Stagiaires | F. |
| 18. | E of N - U.K. | E. |
| 19. | E of N - France
Information | F. |

(cont'd.)

1956 (cont'd.)

- | | | |
|-----|---|--------|
| 20. | Atomic Energy Agreement with U.K.
and U.S.A.

(M.T.) | E. |
| 21. | E of N - West Germany | E. |
| 22. | Protocol on Civil Aviation Convention

(M.T.) | E.F.S. |
| 23. | E of N - Turkey | E. |
| 24. | E of N - U.S. | E. |
| 25. | E of N - Venezuela | E. |
| 26. | E of N - France, West Germany,
U.K., U.S. | F.E. |

1 9 5 7

- | | | |
|-----|---|--------------|
| 1. | E of N - U.S. | E. |
| 2. | Finance Agreement with U.S. | E. |
| 3. | UN Convention on the Political
Rights of Women

(M.T.) | 5 UN |
| 4. | E of N - U.S. | E. |
| 5. | International Sugar Agreement

(M.T.) | 5 UN |
| 6. | International Air Agreement - Iceland

(M.T.) | E.F.S. |
| 7. | International Air Agreement concerning
Greenland

(M.T.) | E.F.S. |
| 8. | Atomic Energy Agreement - U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | I.L.O. Convention on Ships Crews

(M.T.) | E.F. |
| 11. | E of N - India | E. |
| 12. | Convention - West Germany | E.
German |
| 13. | E of N - Peru | E. |
| 14. | E of N - Portugal | E. |
| 15. | E of N - U.K. | E. |
| 16. | E of N - Netherlands | E. |
| 17. | E of N - Norway | E. |
| 18. | E of N - Denmark | E. |

(cont'd.)

1957 (cont'd.)

19.	E of N - Greece	E.
20.	Statute of Industrial Atomic Energy Authority (M.T.)	5 UN
21.	Protocol - U.S.	E.
22.	Tax Convention - U.S.	E.
23.	Tax Agreement - South Africa	E.
24.	Tax Agreement - South Africa	E.
25.	Convention concerning Facilities for Touring (M.T.)	E.F.S.
26.	Convention on Fur Seals (M.T.)	E.R. Japanese
27.	Protocol - Exhibitions (M.T.)	E.F.
28.	E of N - United Nations	E.
29.	Agreement - West Germany	E. German
30.	Convention - Netherlands	E. Dutch
31.	E of N - Ireland	E.
32.	E of N - South Africa	E.
33.	E of N - Venezuela	Spanish
34.	I. Customs Convention on the Temporary Importation of Motor Vehicles (M.T.)	E.F.S. (official trans.: Chinese, Russian)
35.	Agreement - War Graves (M.T.)	E.F. German
36.	War Graves Agreement - Commonwealth, West Germany (M.T.)	E. German

1958

- | | | |
|-----|---|--------|
| 1. | Protocol - I.C.A.O.
(M.T.) | E.F.S. |
| 2. | Convention on Damage caused by
Foreign Aircraft to Third Parties
(M.T.) | E.F.S. |
| 3. | E of N - Portugal | E. |
| 4. | Agreement - India | E. |
| 5. | Agreement Federation of Rhodesia
and Nyassaland | E. |
| 6. | Convention - Pakistan | E. |
| 7. | E of N - U.K. | E. |
| 8. | Agreement - Switzerland | E.F. |
| 9. | Agreement with U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | Convention on the Inter-Governmental
Wartime Consultative Organisation
(M.T.) | E.F.S. |
| 12. | E of N - Denmark | E. |
| 13. | E of N - Norway | E. |
| 14. | E of N - Sweden | E. |
| 15. | E of N - U.S. | E. |
| 16. | E of N - Australia | E. |
| 17. | E of N - Norway | E. |
| 18. | E of N - Denmark | E. |
| 19. | E of N - Norway | E. |
| 20. | E of N - Sweden | E. |
| 21. | E of N - U.K. | E. |

(cont'd.)

1958 (cont'd.)

- | | | |
|-----|---|---------------------|
| 22. | E of N - U.S. | E. |
| 23. | Agreement - Settling claims in Korea | E. |
| | (M.T.) | Korean |
| 24. | E of N - France | F. |
| 25. | Agreement - India | E. |
| 26. | E of N - West Indies | E. |
| 27. | Agreement - Ceylon | E. |
| 28. | E of N - U.S. | E. |
| 29. | E of N - Portugal | E. |
| 30. | E of N - Switzerland | F. |
| 31. | International Convention for the
Prevention of Pollution of the Sea | E.F. |
| | (M.T.) | |
| 32. | Declaration - Denunciation of
Pt. II Inter-American Telecommunications
Convention | E.F.S.
Portugese |
| 33. | E of N - Venezuela | S. |

1959

- | | | |
|-----|--|------------------|
| 1. | E of N - Finland | E. |
| 2. | E of N - U.S. | E. |
| 3. | International Sugar Agreement
(M.T.) | E.F.S.
C.R. |
| 4. | Protocol to N.W. Atlantic
Fisheries Convention
(M.T.) | E. |
| 5. | E of N - U.S. | E. |
| 6. | E of N - U.S. | E. |
| 7. | Agreement with I.A.E.C.
(M.T.) | E. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | Protocol to Whaling Convention
(M.T.) | E. |
| 12. | E of N - U.S. | E. |
| 13. | International Agreement creating the
International Office of Epizootics
(M.T.) | F. |
| 14. | Austrian State Treaty
(M.T.) | R.E.F.
German |
| 15. | E of N - Venezuela | S. |
| 16. | Atomic Energy Agreement with U.S. | E. |
| 17. | International Wheat Agreement
(M.T.) | E.F.S. |
| 18. | Atomic Energy Agreement with Australia | E. |
| 19. | E of N - Greece | E. |

(cont'd.)

1959 (cont'd.)

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|-----|--------------------------------------|------------------------------------|
| 20. | E of N - Venezuela | S. |
| 21. | E of N - U.S. | E. |
| 22. | Agreement with EURATOM

(M.T.) | E.F.
German
Dutch
Italian |
| 23. | Tax Convention with Finland | E.
Finnish |
| 24. | E of N - Switzerland | F. |

1 9 6 0

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|-----|--|----------------|
| 1. | Index | |
| 2. | U.N. Convention on the Nationality
of Married Women | C.E.F.
R.S. |
| 3. | E of N - Norway | E. |
| 4. | Protocol with U.S.S.R. | E.R. |
| 5. | E of N - Norway | E. |
| 6. | E of N - Denmark | E. |
| 7. | E of N - Spain | E. |
| 8. | Agreement of International Development
Association

(M.T.) | E. |
| 9. | Agreement with Australia | E. |
| 10. | E of N - U.S. | E. |
| 11. | E of N - Norway | E. |
| 12. | E of N - U.S.A. | E. |
| 13. | Tax Convention with Netherlands | E.
Dutch |
| 14. | Agreement with Pakistan | E. |
| 15. | Agreement with Japan | E.
Japanese |
| 16. | E of N - U.K. | E. |
| 17. | Agreement with U.S. | E. |
| 19. | E of N - U.S. | E. |
| 20. | E of N - U.K. | E. |
| 21. | I.L.O. Convention on the
Abolition of Forced Labour

(M.T.) | E.F. |
| 22. | E of N - U.S. | E. |
| 23. | E of N - Venezuela | S. |
| 24. | Air Agreement with Pakistan | E. |

1 9 6 1

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|-----|---|----------------|
| 1. | Indus Basin Development agreement
(M.T.) | E. |
| 2. | E of N - Iran | E. |
| 3. | E of N - U.S. | E. |
| 4. | E of N - West Germany | E. |
| 5. | E of N - U.S. | E. |
| 6. | Agreement with West Germany | E.
German |
| 7. | E of N - U.S. | E. |
| 8. | Claims Agreement with Japan | E.
Japanese |
| 9. | E of N - U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | E of N - U.S. | E. |
| 12. | E of N - U.S. | E. |
| 13. | E of N - Venezuela | E. |
| 14. | E of N - U.S. | E. |
| 15. | Accord avec la Suisse | E.F. |
| 16. | E of N - Venezuela | E. |
| 17. | Agreement with Italy | E.
Italian |
| 18. | Convention of the O.E.E.C.D.
(M.T.) | E.F. |

1 9 6 2

- | | | |
|-----|---|--|
| 1. | Agreement with Ghana | E. |
| 2. | Trade Agreement with U.S. | E. |
| 3. | Convention with U.S. | E. |
| 4. | Agreement with Italy | E. |
| 5. | E of N - U.S. | E. |
| 6. | E of N - U.S. | E. |
| 7. | E of N - France | F. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - Mexico | E. |
| 10. | Agreement - U.S.A. | E. |
| 11. | E of N - Norway | E. |
| 12. | E of N - Greece | E. |
| 13. | Universal Copyright Convention | E. "established"
F. "
S. "
(official texts: German
Italian, Portugese) |
| | (M.T.) | |
| 14. | E of N - Chili | E. |
| 15. | E of N - U.S. | E. |
| 16. | E of N - San Marino | F. |
| 17. | E of N - Venezuela | E. |
| 18. | E of N - Iceland | E. |
| 19. | Atomic Energy Agreement - Sweden | E.F. |
| 20. | Declaration and Protocol on the
Neutrality of Laos | E.F.C.R.
Laotian |
| | (M.T.) | |
| 21. | E of N - U.S. | E. |

1963

- | | | |
|-----|--|----------------|
| 1. | Executive Agreement with Netherlands | E. |
| 2. | E of N - U.S. | E. |
| 3. | E of N - El Salvador | E. |
| 4. | Agreement with India | E. |
| 5. | E of N - Bolivia | E. |
| 6. | Agreement with Finland | E. |
| 7. | Supplementary Convention on abolition of slavery | E.F.R.S.
C. |
| | (M.T.) | |
| 8. | E of N - U.S. | E. |
| 9. | E of N - Denmark | E. |
| 10. | Agreement with India | E. |
| 11. | Agreement and Protocol with Nigeria | E. |
| 12. | E of N - Greece | E. |
| 13. | E of N - U.S. | E. |
| 14. | E of N - U.S. | E. |
| 15. | E of N - U.S. | E. |
| 16. | Accord sur les relations cinématographiques Franco-Canadiennes | E.F. |
| 17. | Wheat Agreement with Poland | E.
Polish |
| 18. | E of N - U.S. | E. |
| 19. | E of N - U.S. | E. |
| 20. | E of N - U.S. | E. |
| 21. | Nato Agreement on the Status of Forces in West Germany | E.
German |

(M.T.)

(cont'd.)

1963 (cont'd.)

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|-----|---|---------------|
| 22. | Agreement with U.K. and West
Germany

(M.T.) | E.
German |
| 23. | Agreement with West Germany | E.
German |
| 24. | Agreement with Italy | E.
Italian |

1 9 6 4

1.	Neuclear Test Ban Treaty (M.T.)	E.R.
2.	Columbia River Treaty	E.
3.	E of N - U.S.	E.
4.	Agreement with Mexico	E.S.
5.	Agreement with Czechoslovakia	E. Czech.
6.	E of N - U.S.	E.
7.	E of N - U.S.	E.
8.	Indus River Valley Development Fund Agreement (M.T.)	E.
9.	E. of N. - U.S.	E.
10.	E of N - U.K.	E.
11.	E of N - Peru	E.
12.	Agreement with Nigeria	E.
13.	E of N - U.S.	E.
14.	E of N - Norway	E.
15.	E of N - U.S.	E.
16.	E of N - U.S.	E.
17.	Agreement with U.S.	E.
18.	E of N - West Germany	E.
19.	E of N - U.S.	E.
20.	E of N - U.S.	E.
21.	E of N - U.K.	E.
22.	E of N - Japan	E.

(cont'd.)

1964 (cont'd.)

23.	E of N - Denmark	E.
24.	C.O.M.S.A.T. Agreement	E.F.
25.	E of N - Switzerland	E.
26.	Fur-Seal Agreement	E.
	(M.T.)	
27.	E of N - U.S.	E.

1 9 6 5

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|-----|---|----------------|
| 1. | Index | |
| 2. | Automotive Agreement - U.S. | E.F. |
| 3. | Trade Agreement - Bulgaria | E.R. |
| 4. | Protocol - U.S.S.R. | E.R. |
| 5. | E of N - U.S. | E. |
| 6. | Agreement with Spain | E.S. |
| 7. | E of N - U.S. | E. |
| 8. | E of N - U.S. | E. |
| 9. | E of N - U.S. | E. |
| 10. | E of N - U.S. | E. |
| 11. | Supplementary Tax Convention -
Denmark | Danish
E. |
| 12. | Supplementary Tax Convention -
Finland | E.
Finnish |
| 13. | Tax Convention - Japan | E.
Japanese |
| 14. | Supplementary Tax Convention -
Netherlands | E.
Dutch |

PART VII

CONCLUSIONS:

THE OFFICIAL STATUS OF LANGUAGES
IN CANADA

CHAPTER XIII

THE STATUS OF FRENCH AND ENGLISH AS
OFFICIAL LANGUAGES IN CANADA

A - I N T R O D U C T I O N

13.01 Purpose of the present chapter.-

The purpose of this concluding chapter is to try and determine the official status of French and English in the various Canadian jurisdictions, whether federal, provincial or territorial. On the basis of our findings as presented in the previous chapters, and of other pertinent provisions of law which will be referred to, we wish to establish the extent to which French or English, or both, have official status in any given jurisdiction. But official status must not be confused with standing in practice. As we know from experience, and have had occasion to note in this Report, a language can be officially recognized but be ignored in practice. This chapter is concerned with juridical rather than effective or practical status.

13.02 What is an official language ?

The terms "official language" have been used frequently in this Report and are current in legal and political discussions of the language question in Canada. To our knowledge, they have never been properly defined. We ourselves have used the following working definition: an official language is a language in which all or some of the public affairs of a particular jurisdiction are conducted, either by law or custom. We take public affairs to comprise: the parliamentary and legislative process, administrative regulation, the rendering of justice, quasi-judicial activities, and the overall day-to-day administration. We have

examined many of these fields at length in this Report. But several important areas, which are germane to our project, such as education, the civil service and the Supreme Court, have been left out because they formed the object of separate inquiries. But, in brief, we describe as an official language the language in which laws are passed, cases can be pleaded and argued, and the Government and the citizenry deal with one another. In Canada, such description, depending of course on the jurisdiction, can only fit French and English.

13.03 The constitutional position.-

In chapter II we demonstrated that there is a constitutional vacuum in Canada with respect to languages. There is no doubt as to the respective powers of Parliament and the provincial Legislatures to deal with the ancillary linguistic aspects of any subject matter on which they are entitled to legislate¹. But jurisdiction over the substantive and cultural aspects of language is not defined clearly anywhere in the constitution². In fact, subject to the narrow exceptions of s. 133 of the B.N.A. Act, both Parliament and the provinces can deal with languages almost at will³. Consequently it is only by examining the laws and practices of each jurisdiction individually that we can determine what official status it grants to English or French. This is the precise aim of the present chapter.

1. cf. 2.03

2. cf. 2.04 et seq.

3. cf. 2.05 and 2.07

B - THE OFFICIAL STATUS OF FRENCH AND
ENGLISH WITHIN THE FEDERAL JURISDICTION

13.04 Constitutional requirements.-

The only provisions of the British North America Act which impose language requirements at the federal level are found in s. 133, which, as we have seen, ¹ states that either language can be used in the debates of Parliament; the records and journals of Parliament shall be bilingual; and that all statutes must be published in both languages. Furthermore, all pleadings and processes in the courts of Canada can be in either French or English. The very limited scope of these provisions has been analysed in an earlier chapter ². We will now review how Parliament and the federal Government have dealt with languages.

13.05 The federal parliamentary and legislative process.-

We have seen ³ how Parliament carries out the duty imposed upon it by s. 133 of the B.N.A. Act to legislate in both languages. Despite some practical shortcomings, all federal statutes are proposed, adopted and published in both French and English. This respect of bilingualism is also reflected in the following Standing Orders of Parliament:

- (a) the prayers read by the Speaker before the beginning of each daily session, are in English and French on _____ alternate days, at least insofar as the Speakers are

1. In 2.02.
2. Chapter II, and more particularly s. 2.02.
3. In 3.04 to 3.13.

conversant with both languages¹.

(b) Standing Order No. 43 dated December 20, 1867 reads:

"All motions shall be in writing, and seconded, before being debated or put from the Chair. When a motion is seconded, it shall be read in English and in French by Mr. Speaker, if he be familiar with both languages; if not, Mr. Speaker shall read the motion in one language and direct the Clerk at the Table to read it in the other, before debate."²

(c) Standing Order No. 52 adopted on February 10, 1885 and modified on March 22, 1927 provides that the member elected to serve as Deputy Speaker and Chairman of Committee shall be required to possess "the full and practical knowledge of the official language which is not that of Mr. Speaker for the time being".³

(d) Standing Order No. 74 (of December 20, 1867, as modified on March 29, 1876), states that:

"All bills shall be printed before the second reading in the English and French languages."⁴

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1. Rules and Forms of the House of Commons of Canada, by Arthur Beauchesne, 4th ed., 1958, p. 76.
 2. Beauchesne, op. cit., p. 161.
 3. Beauchesne, op. cit., p. 187.
 4. Beauchesne, op. cit., p. 263.

13.06 Subordinate legislation.-

We concluded in our study of federal subordinate legislation¹ that the bulk of the federal regulations are issued almost simultaneously in both languages, although they are almost uniformly drafted entirely in English and then translated². We also noted³ that there is no constitutional requirement that subordinate or administrative law be bilingual. Bilingual publication is thus the result of voluntary practice or amendable federal legislation.

13.07 Federal courts.-

The courts of Canada in which s. 133 of the B.N.A. Act allows all pleadings and processes to be in either language have been enumerated in chapter IV⁴. They are: the Supreme Court, the Exchequer Court which also exercises the jurisdiction of the Court of Admiralty and the Prize Court, **courts martial** and **military courts**, the Senate Divorce Commissioner, possibly provincial courts which are designated as federal courts, the courts in the Northwest Territories and in the Yukon. On the other hand, the extent to which the words "Pleading or Process" make all proceedings in these courts bilingual is not clear⁵. Both the Canadian Bill of Rights and a considerable number of federal statutes and regulations recognize the right to interpreters⁶. The Criminal Code further

1. cf. 3.17 to 3.31.

2. cf. 3.25.

3. In 2.02.

4. More particularly in 4.17.

5. cf. 2.02 (c).

6. cf. 4.23 (a).

provides for mixed or bilingual juries in Quebec and Manitoba¹

13.08 Federal quasi-judicial boards and tribunals.-

We have explained that the growing number of federal boards and commissions exercising quasi-judicial powers at the federal level are not governed by s. 133 of the B.N.A. Act² and that the very limited bilingualism they practice is based on custom rather than legal requirement. Our inquiry left no doubt, however, that most federal boards and commissions recognize the right of any party to proceed in French, although this recognition entails very few practical consequences. **In practice, the great bulk of their proceedings are entirely in English.**

13.09 The administration or conduct of public affairs.-

We have had occasion to **point out a fairly large number** of federal statutes or regulations dealing with public notices, signs and labels to be given or made by the authorities or by certain individuals and corporations to the public³. Many of these require the use of French, at least when they are in the Province of Quebec. Official forms and returns can normally be made in either language⁴. Both languages also seem to be treated almost equally when there are linguistic requirements for official, professional or private employment⁵. We found similar situations

1. cf. 5.11 and 5.13.

2. cf. 6.02.

3. cf. 9.04 and 9.07 (a).

4. cf. 9.08 (a) and 10.02.

5. cf. 9.10 (a) and 9.11 (a).

in the linguistic regulations of private activities¹ and in the use of corporate names². Additional evidence of the nearly equal official status of English and French in federal law can be found in a number of other statutes and in federal subordinate legislation. For instance, the Bank of Canada Act³ requires Canadian bank notes to be printed in both the English and French languages. The Canadian Citizenship Act⁴ requires applicants for citizenship to have "an adequate knowledge of either the English or the French language, or, if (they have) not such an adequate knowledge, (to have) resided continuously in Canada for more than twenty years". There have been no cases official reported interpreting what constitutes "an adequate knowledge of either the English or the French language", but in reply to our inquiry, we were advised by Mr. R. E. Williams, Counsel to the Department of Citizenship and Immigration, in a letter dated August 26, 1965, that

"... the Department takes the position that the expression 'adequate knowledge' should be interpreted to mean that the knowledge of the language ought to be adequate to the needs of the applicant in the normal course of his life but that lack of any knowledge of a language could not amount to an adequate knowledge. In other words, the Department is of the view that the applicant should have some knowledge of the English or French language with the degree of facility and fluency required,

1. 9.12 (a).

2. cf. 10.02.

3. 1952, R.S.C., c. 13, s. 21 (4).

4. 1952, R.S.C., c. 33, s. 10 (1) (e).

depending upon such factors as the age, sex, education, and occupation of the particular applicant."

But applicants are naturally not obliged to know either language if they have resided in Canada for 20 years and they are in fact allowed to apply for citizenship in a language other than French or English. The Citizenship Regulations¹ require the Clerk of the Citizenship Court to assist an applicant to complete the application form². This was intended to eliminate the need for applications in a language other than English or French³. We are informed that a French-speaking applicant may apply for citizenship in his mother tongue in any citizenship court, no matter where in Canada⁴. In other words, an immigrant could apply for citizenship in French although the court be situated in British Columbia or in the Maritimes. The application form is standard and the English and French texts are combined in one form⁵. A French-speaking applicant before an English-speaking court is normally requested to provide an interpreter and when the court does not have its own interpreter, the costs of interpretation are normally

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1. Canadian Citizenship Regulations established by P.C. 1954-1190 and amended by P.C. 1955-528; P.C. 1955-1246; P.C. 1956-1079; P.C. 1957-1542.
 2. s. 4 of the Regulations.
 3. Same letter from Mr. R. E. Williams. The text of this letter is annexed to this chapter as Annex XIII-A with all the correspondence
 4. cf. Williams' letter, Annex XIII-A.
 5. Id..

borne by the applicant.¹ In reply to our inquiry as to the ability of a unilingual English judge to determine the adequacy of an applicant's knowledge of the French language, and conversely, Mr. Williams wrote us:²

"There is no set test that Judges are required to apply to determine the adequacy of an applicant's knowledge of the English or French language. This is left up to the Judge in question to determine. As a practical matter, most of the Judges that have been appointed as such under the Act have at least some knowledge of French and it has apparently never been felt to be a problem by any of them to determine the adequacy of an applicant's knowledge of one language or the other. As to the County and District Court Judges, of course, we have no knowledge of the extent of their understanding of both languages, and it is expected that a French applicant who appeared before a unilingual English Judge would provide his own interpreter, at his own cost, if he could not get along in English. If there were any serious doubt whether the interpreter was adequately translating the language of the Judge into that of the applicant and vice-versa, it is probable that the Court would supply its own interpreter, and at the cost of the Citizenship Registration Branch. This problem has never, in the memory of any of our officials, arisen."

Certificates of citizenship are bilingual in one form. The Oath of Allegiance may be taken in either French or English anywhere in Canada. If in the opinion of the court an interpreter is necessary in order to administer the Oath of Allegiance,

1. cf. Williams' letter, Annex XIII-A.

2. id..

it would be up to the applicant to provide such interpreter when the court does not have its own.¹ We also draw attention to other relevant federal statutes. For instance, chapter V of the Fourth Schedule of the Canada Shipping Act² states that danger messages "may be transmitted either in plain language (preferably English) or by means of the International Code of Signals". The Food and Agriculture Organization of the United Nations Act³ provides that pending the adoption by the Conference of any rules regarding languages, "the business of the Conference shall be transacted in English"⁴. On the other hand, the Copyright Act⁵ in its Second Schedule refers to the Revised Berne Convention, article 21 of which states that the official language of the Office of the International Union for the Protection of Literary and Artistic Works shall be French. Under the Visiting Forces (North Atlantic Treaty) Act⁶, among the documents required in respect of members of a force, there is the "individual or collective movement order, in the language of the sending state and in the English and French language"⁷.

1. cf. Williams' letter, Annex XIII-A.

2. 1952, R.S.C., c. 29, as amended.

3. 1952, R.S.C., c. 122.

4. art. XXIII.

5. 1952, R.S.C., c. 55.

6. 1952, R.S.C., c. 284.

7. art. III (2) (b) of the Agreement governing the Status of Visiting Forces found in the Schedule to the Act.



Evidence that French and English are treated as equal official languages is to be found in federal regulations dealing with broadcasting and television. The Radio (A.M.) Broadcasting Regulations¹ state:

"Foreign Language Broadcasts

17. (1) No station shall broadcast programs in a language other than French or English for periods that in the aggregate

(a) exceed fifteen per cent of the broadcast time per week of the station;
or

(b) where the licensee of the station has been authorized by the Board under this section to appropriate a larger percentage of the broadcast time of the station for programs broadcast in a language other than French or English, exceed the percentage of its broadcast time that the Board has authorized the licensee to appropriate for such programs.

(2) The Board may, upon application by a licensee and without holding a public hearing in respect of the application, authorize the licensee to appropriate for the broadcasting of programs in a language other than French or English a percentage of the broadcast time of a station exceeding fifteen per cent but not exceeding twenty per cent of such broadcast time.

(3) A licensee may apply to the Board for authorization to appropriate more than twenty per cent of the broadcast time of a station for the broadcasting of programs in a language other than French or English and shall show in such application

(a) that there is a sufficient number of non-French

1. S.O.R./64-49, 1964, Canada Gazette, Part II, p. 157.



or non-English speaking people in his coverage area to justify the granting of the authorization;

(b) his reasons for believing that such broadcasts will help to integrate those people into the community; and

(c) the methods by which he will exercise control over such programs and advertising content of such broadcasts.

(4) The Board may, after holding a public hearing in respect of an application made under subsection (3), authorize the station in respect of which the application is made to broadcast programs in a language other than French or English for periods that in the aggregate exceed twenty per cent but do not exceed forty per cent of the broadcast time per week of the station.

(5) This section does not apply to programs broadcast in an Eskimo or Canadian Indian language."

An almost identical provision is to be found in the Radio (F.M.) Broadcasting Regulations¹. Under the Radio (T.V.) Broadcasting Regulations², programs emanating from English and French language countries are put on the same footing. The General Radio Regulations³ state that regardless of the language used for transmission, every station shall identify itself at the end of transmission in English or French. Somewhat puzzling are the Running Horse Regulations⁴ adopted pursuant to the Criminal Code. Section 79 states:

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1. SOR/64-249, 1964, Canada Gazette, Part II, p. 643, s. 17.
 2. SOR/64-50, 1964, Canada Gazette, Part II, p. 169, s. 6 (4).
 3. SOR/63-297, 1963, Canada Gazette, p. 831, s. 52 (2).
 4. SOR/61-293, 1961, Canada Gazette, Part II, p. 967.



"Should the association desire to show on a daily race programme, any regulation covering the distribution of the pari-mutuel pools, it must do so in the language of the regulations as issued by the Department of Agriculture."

It should also be noted that the Food and Drug Regulations¹ refer to the names of drugs and vitamins and state that they must be designated in either English or French.

13.10 Conclusion.-

From the foregoing it would thus appear that federal law treats French and English as almost equal official languages, although in some cases preference is given to English or French is only required in the Province of Quebec. But we stress again that we venture no opinion on the extent to which the federal authorities respect in fact this juridical equality.

1. C.P., 1954-1915, Canada, SOR/1955, Part II, p. 1830, Part C, C.01.001 b) and k) and Part D, D.01.001 a) and h).

C - PROVINCES AND TERRITORIES.

13.11 Official status of language in Alberta.-

(a) Constitutional background.- We have seen¹ that a limited argument can be made that s. 110 of the Northwest Territories Act, as amended in 1891², has never been abrogated and that French may still be an official language of the Legislative Assembly of Alberta and in the courts of that Province. On the other hand, the fact remains that according to the 1961 census, out of a total Alberta population of 1,331,944, no more than 42,276 listed French as their mother tongue, i.e. 3.17% (while Ukrainians were 6.3% and Germans 7.33%)

(b) The Alberta Legislative Assembly.- The Rules and Orders of the Assembly³ are silent on the question of languages. The reference to "the usages and customs of the House of Commons"⁴ can certainly not be interpreted as importing the bilingualism which obtains in the federal Parliament. An informal survey we conducted by questionnaire among members of the Legislative Assembly picked at random,

1. In 1.164 to 1.166.

2. "Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of such Assembly; and all ordinance made under this Act shall be printed in both those languages: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and, the regulations as made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant-Governor in conformity with the law and thereafter shall have full force and effect."

3. Rules, Orders and Forms of Proceedings of the Legislative Assembly of Alberta, Edmonton, King's Printer, 1950.

4. In Rule I.

revealed that by custom and usage, rather than as a result of any specific statute, English has been the only language ever used in the Legislature or in any of its committees. Our respondents also indicated that there had been no demand for the introduction of French or of any other language. What the situation was in the past is difficult to establish in view of the fact that official records of debates were not kept prior to 1965 when they began.

- (c) Alberta courts.- As indicated in sub-paragraph (a) of the present section, some doubt exists as to whether French has been abrogated in Alberta courts. At one time, s. 40 of the Alberta Interpretation Act¹ provided that whenever public records were required to be kept or any written process to be had or taken, such records or process should be kept, had or taken in the English language. But, this provision does not appear in the 1958 revision of the Act². Alberta law gives limited recognition to the right to an interpreter³. It would appear, however, that in some lower courts

1. 1955, R.S.A., c. 16.

2. 1958, S.A., c. 32.

3. cf. 4.23 (b).



in districts where there is a heavy concentration of French-speaking population, French is used on occasion unofficially in court proceedings¹.

- (d) The administration of public affairs.- Both the Municipal Districts Act and the City Act make knowledge of English a prerequisite of municipal office². English is also treated as the only official language by the Alberta Companies Act³, although some French corporate names exist⁴. English is required for permission to work in Alberta mines⁵. The Alberta School Act⁶ provides that "all schools shall be taught in the English language"⁷. But it also states⁸ that the Board of a district may cause "a primary course to be taught in the French language".
- (e) Conclusion.- From a practical point of view we can conclude that the only language which enjoys official status in Alberta is English, despite a recent judgment that French is a "permissive language" in the Province.⁹

1. cf. 4.28 (a).

2. cf. 8.22 (a).

3. cf. 9.08 (b).

4. cf. 10.03 (a).

5. cf. 9.10 (b).

6. 1955, R.S.A., c. 297.

7. s. 385.

8. s. 386 (1).

9. General Motors Acceptance Corporation of Canada Ltd. v. Perozni, (1965) 52 W.W.R. 32, also reported at [1965] 51 D.L.R. (2d) 724, discussed in 1.165 and 1.166.

13.12 The official status of languages in British Columbia.-

- (a) Constitutional background.- We have seen¹ that no British Columbia statute ever conferred official status on any language, but that English seems to have acquired this status de facto. Indeed, according to the 1961 census, the total population of British Columbia of 1,629,082 numbered only 26,179 people (or 1.6% of the total population) who gave French as their mother tongue.
- (b) Legislative Assembly.- The Standing Orders of the² Legislative Assembly of British Columbia also refer to the orders, usages and customs of the House of Commons in the absence of British Columbia Regulations³. There are no other provisions dealing with language. Our survey by questionnaire among the members of the Legislature disclosed the same situation as in Alberta: by custom English was the only language ever used in debates, in committee or in the records or reports of the Assembly.
- (c) Courts.- The courts of the Province are now governed⁴ by s. 133 of the B.N.A. Act. They do not need to give any recognition to French. Nor do British

1. In 1.167 and 1.168.

2. Queen's Printer, Victoria, 1955.

3. s. 1.

4. cf. 4.20.

Columbia statutes provide for interpreters¹, although interpreters are available and used when needed.²

(d) Public affairs.- The only pertinent provision we were able to find was the Metalliferous Mines Regulations Act which required that persons demanding a blasting³ certificate know English .

(e) Conclusion.- There is no doubt that by custom and tradition English is the only language enjoying official status in British Columbia.

1. cf. 4.23 (c).
2. cf. 4.28 (b).
3. cf. 9.10 (c).

13.13 The official status of languages in Manitoba.-

(a) Constitutional position.- In 1890 Manitoba made English its sole official language in the following terms:

"1. Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only be printed and published in the English language.

2. This Act shall only apply so far as this Legislature has jurisdiction so to enact, and shall come into force in the day it is assented to."¹

We have seen that there are some reservations as to the legality of this abolition². After 1890 a number of statutory provisions were adopted to give effect to the change³.

(b) Legislative Assembly.- The Rules and Orders⁴ of the Legislative Assembly of Manitoba do not contain any pertinent provisions other than the usual reference to the rules of the House of Commons⁵ and the requirement that notices of private bills be published in the

1. An Act to provide that the English Language shall be the official language of the Province of Manitoba, 1890, S.M., 53 Vict., c. 14. The statute appears in virtually the same form in the Revised Statutes of Manitoba: 1954, R.S.M., c. 187.

2. cf. 1.144 and 2.06.

3. cf. 1.145.

4. Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba, Winnipeg, Queen's Printer, 1960.

5. Rule 1 (2).



Manitoba Gazette and "at least once in each week during four weeks, in an issue of a newspaper published in English"¹. Obviously the above-quoted statute makes any explicit rules and orders unnecessary. However, our questionnaire to members of the Manitoba Legislature disclosed that some members do on occasion make remarks in French which are recorded in that language in Hansard, together with a translation. Although the use of French appears to be infinitesimal, there is some indication that it is increasing slightly. But we were informed by one member who replied to our questionnaire in French:

"Etant donné qu'une très petite minorité des députés parle et comprend le français, on ne fait pas usage courant du français. Chacun des députés de langue française dit quelques mots en français chaque année pour préserver la tradition.

Par occasion aussi, quand nous avons des visiteurs particuliers de langue française dans les galeries, ils seraient présentés en français par l'orateur de l'assemblée. Ceci se fait en particulier pour les groupes scolaires qui nous rendent fréquemment visite."²

The joint reply of three members stated that "French can be used freely, but because few understand it, it is used simply to mark the fact that it is official" (sic). They

1. Rule 103 (1).

2. All our correspondents were guaranteed anonymity, so this one cannot be identified.

confirm the fact that French speeches are printed in the original version with an English translation. We were told that French is used mainly as a symbolic gesture. On occasion, the Speaker will greet prominent French-speaking visitors in French. French-speaking members (they now total 4 out of 57) may say a few words in French. Even the Prime Minister is said to sometimes speak a few sentences in French as a gesture. One respondent pointed out that this use of French could circumvent the 1890 statute because the latter refers only to the language of "records and journals" and not to the language of debate!

(c) Courts. - The courts of Manitoba do not fall under s. 133 of the B.N.A. Act¹. The only language officially permitted before them under the 1890 Act is English. The Rules of Practice of the Court of King's Bench for Manitoba give a limited recognition to the right to interpreters², although interpreters are used when needed³. In fact, it was stated that French is used unofficially in some of the lower courts when all the participants and their lawyers are French-speaking⁴. It will also be recalled that the Criminal Code provides for the right to a mixed jury in

1. cf. 4.20.

2. cf. 4.23 (d).

3. cf. 4.28 (c).

4. cf. 4.28 (c).

criminal trials in Manitoba¹.

- (d) Education.²- The Manitoba Public Schools Act states that English shall be used as the language of instruction in all public schools except for some limited exceptions:

"240. (1) Subject to sub-section (2), English shall be used as the language of instruction in all public schools.

(2) When authorized by the Board of Trustees of a district, a language other than English may be used in any school in the district:

- (a) during a period authorized herein for religious teaching;
- (b) during a period authorized in the program of studies for the teaching of a language other than English; and
- (d) before and after the school hours prescribed in the regulation and applicable to that school."³

- (e) The administration of public affairs.⁴- We have noted that some Manitoba city charters require a knowledge of English as a qualification for municipal office although the Metropolitan Winnipeg Act states that to qualify for election it is sufficient to be "able to read the English or French language and write it from dictation"⁴. A very limited recognition of the

1. cf. 5.13.

2. 1954, R.S.M., c. 215.

3. s. 240.

4. cf. 8.22 (b).

presence of French ethnic minority is found in various Manitoba statutes dealing with public notices¹ and in the Manitoba Employment Standards Act² and in some statutes dealing with education³. But other statutory provisions either ignore French or require English⁴. Manitoba law also allows specifically for French corporate names⁵.

(f) Conclusion.- English is the official language of Manitoba, but French has received official recognition to a very limited extent. This may reflect both the historical background of the Province and the fact that it has a relatively substantial French-speaking population (60,899 who list French as their mother tongue out of a total population of 921,686). We have studied the mechanics of giving a more formal, although geographically limited, recognition to French in court proceedings⁶ and at the municipal level⁷, but it is not for the undersigned to say whether such measure should be implemented.

1. cf. 9.06.

2. cf. 9.08.

3. cf. 9.10 (d), and 9.11 (b).

4. cf. 9.07 (c), footnote 3 (a), 9.08 (c), 9.10 (d) and 9.11 (b).

5. cf. 10.03 (b).

6. cf. 4.40.

7. cf. 8.24.

13.14 The official status of languages in New Brunswick.-

- (a) Constitutional background.- New Brunswick has no statutory provisions governing language¹.
- (b) Legislative Assembly.- The Standing Rules² have the usual reference to the usages and customs of the House of Commons³. The only pertinent provision which contains a significant recognition of the presence of an important French minority is Rule 86 concerning private bills:

"A person intending to present a petition for the enactment of a Private Bill shall cause a notice, stating clearly and distinctly the nature and objects thereof and signed by or on behalf of the applicant with the address of the ~~party~~ signing the same, to be published as follows:

(a) once in the Royal Gazette at least two weeks before filing the petition;

(b) once a week for three successive weeks before filing the petition in a newspaper published or having a general circulation in the County which is, or in which is situated the Municipality, or in which reside the parties or the majority of the parties, interested in or to be affected by the Bill; and

(c) when such County is largely composed of French speaking persons, in French in a newspaper published wholly or partly in the French language and having a general circulation in the County." 4

1. cf. 1.10.

2. Standing Rules of the Legislative Assembly, Fredericton, 1963.

3. S.R. 3.

4. *Italics ours*

The use of French is relatively frequent in the New Brunswick Assembly. In his Notes on Parliamentary Procedure¹, George Bidlake, Clerk of the Legislative Assembly (1925-1936), writing in 1930, already noted:

"In this House latitude is usually allowed to French-speaking members whose lack of familiarity with English phraseology makes it rather difficult for them to speak off-hand in that language. Having to think in one language and speak in another is not conducive to fluency in the latter."²

This statement as to the use of French is borne out by the replies to our questionnaire. Our respondents agreed that English had achieved official status by custom and usage, but that French was also used both in debates of the Assembly and in committee. The estimate as to the amount of French used centered generally around 5%, although one single respondent set it as high as 10%. All also agreed that they had noticed a steady increase in the use of French during the last 20 years. They stated that whenever French was used, the debate would be reported in French with an English translation. French is not only used by ordinary members, but on occasion, by Cabinet Ministers and even the Prime

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1. Standing Rules of the Legislative Assembly of New Brunswick, op. cit. pp. 37 and following.
 2. p. 47.

Minister. Even some English-speaking members will occasionally speak part of their speeches in French. Several members stated that French was not a working language, however, and that part of this bilingualism was directed/^{mainly}at the press and the voters. One reply stated that a member whose mother tongue is French "will usually deliver anywhere up to half of a 'major speech' (i.e. in the Throne speech or budget debates) in French". But in impromptu debates "almost without exception" speeches are in English. French appears to be used rarely if ever in the Committee of the Whole and only occasionally in the Committee of Supply (where it is sometimes used for part of a prepared speech dealing generally with the department whose estimates are under consideration). A few members said that there has been a growing demand in some milieux for placing French on the same official level as English. At the present time all statutes are in English without translation. One member pointed out, however, that he arranged for an unofficial translation to be made of Le Code des Caisses Populaires. Another one wrote us:

"In 1871 only the Debates of the Legislative Assembly, I believe, were printed both in French and English. Last year for the first time, I understand the Speech from the Throne was officially printed in both French and English. With those exceptions the publications indicated above are printed only in English."

The same member, apparently English-speaking, concluded:

"In my opinion there has been, over the years, a steady increase in the use of the French debates. I see no reason why this increase should not continue. Essentially, the increase is due to an increase in the number of Legislature members who are bi-lingual."

(c) Provincial courts.- The courts of New Brunswick are not governed by s. 133 of the B.N.A. Act¹. Limited reference is made in New Brunswick law to the right to interpreters². We were advised by most of our correspondents that in some jurisdictions, where all the parties and the magistrates are French-speaking, the entire case, particularly at the lower level, would be conducted in that language, although the record would be entered in English³. This de facto use of French is totally unofficial. We have examined the possibility of creating bilingual judicial districts in the Province⁴.

(d) The administration of public affairs.- We have had occasion to note⁵ that some municipalities in New Brunswick conduct a good deal of their affairs in both languages or in French. The possibility of giving formal recognition⁶ to this state of affairs was referred to. We also came

1. cf. 4.20.

2. cf. 4.23 (d).

3. cf. 4.28 (d).

4. cf. 4.40.

5. In chapter VIII.

6. cf. 8.24.

across a statute dealing with the town of Grand Falls which requires all notices to be in both languages¹. At one time New Brunswick medical practitioners were permitted to prescribe liquor necessary for health reasons in either English or French, but this provision (the right to prescribe) has been repealed.² Some forms of municipal debentures are provided for in both languages³. We have also had occasion to note the widespread use of French or bilingual corporate names in the Province⁴.

(e) Conclusion.- New Brunswick, according to the 1961 census, has 597,936 inhabitants. Of these, **210,530 (or 35.2 of the total), declare that French is their mother tongue.**

These figures explain perhaps why of all the provinces outside Quebec, New Brunswick is obviously the one in which French is the closest to having acquired an official status alongside English. Official bilingualism appears to be more justified in this Province than in any other, including Quebec, where the English-speaking minority is only 13.26% of the total population, as against 35.20% French-speaking inhabitants in New Brunswick.

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1. cf. 9.06.
 2. cf. 9.08 (d).
 3. cf. 9.09.
 4. cf. 10.03 (c).

13.15 The official status of languages in Newfoundland.-

- (a) Constitutional position.- Newfoundland does not appear to have any legislation dealing with languages, nor do any constitutional statutes apply to it.
- (b) Provincial Legislature.- The Standing Orders of the House of Assembly of Newfoundland¹ do not contain any reference to language use. Standing Order No. 1 contains the usual reference to the rules of the House of Commons. The replies to our questionnaire confirm that only English was ever used and that there appears to be no demand for any change. English seems to be the only language enjoying official status, by custom and usage rather than by statute.
- (c) Courts.- Section 133 of the B.N.A. Act does not apply to Newfoundland courts². Newfoundland law does not seem to contain any provisions dealing with interpreters³ and the Province seems to have little need for them⁴. We have seen that juries de medietate linguae were abolished in 1870⁵.

1. St. John's, Queen's Printer, 1951.

2. cf. 4.20.

3. cf. 4.23 (f).

4. cf. 4.28 (e).

5. cf. 5.10.

- (d) Public affairs.- The Newfoundland Companies Act provides that when any document required to be filed is not in the English language, a translation may be required¹.
- (e) Conclusion.- English appears to be the only official language of Newfoundland, if not by statute, at least by custom. Furthermore, the French-speaking population of the Island is less than 1%.

1. cf. 9.08 (d).

13.16 Official status of languages in the Northwest Territories.-

(a) Constitutional position.- In our review of the legal history of bilingualism in the Northwest Territories¹ we concluded² that s.110 of the Northwest Territories Act was never legally abrogated. This section, which is reminiscent of s. 133 of the B.N.A. Act, stated:

"Either the English or the French language may be used by any person in the debates of the Council or Legislative Assembly of the North-West Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of the said Council, or Assembly; and all ordinances made under this Act shall be printed in both those languages."³

In 1890 the Northwest Territories Act was amended as follows:

"Section one hundred and ten of the Act is hereby repealed and the following substituted therefor:-

"110. Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those languages: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording

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1. cf. 1.120 to 1.136 for period before Confederation; and 1.146 to 1.160 for period thereafter.
 2. In 1.156.
- 3.1880 S.C., 43 Vict., c. 25, s. 94.

and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant-Governor in conformity with the law, and thereafter shall have full force and effect."¹

In effect, the bilingualism of Northwest Territories courts was put beyond reach of the Legislative Assembly, but the Assembly was permitted to regulate its own languages. On January 19, 1892 it purported to pass a resolution to make English the sole language of the Assembly, but we have found that this resolution was never proclaimed so that under the 1891 amendment to the Northwest Territories Act it never became law.²

Consequently, it is our opinion that either English or French may be used by any person in the debates of the Legislative Assembly of the Northwest Territories and in the proceedings before their courts. In any case, since the courts of the Northwest Territories are created by Parliament, they are courts of Canada and are required to be bilingual under s. 133 of the B.N.A. Act.³

1. cf. 1.155.

2. cf. 1.156.

3. cf. 4.17 (f).

- (b) The Council of the Northwest Territories.- Irrespective of our opinion that French is still an official language in the Council of the Northwest Territories, **the Council itself /seems to /consider** that English is the only language to be used in its debates and records. The mimeographed Rules of the Council of the Northwest Territories contain no pertinent provisions. Standing Order No. 1 contains the usual reference to the custom and usages of the House of Commons of Canada which, because of the similarity between the constitutional linguistic provisions governing the two Houses, would be applicable¹.
- (c) Courts.- As indicated, there is no doubt that the courts of the Northwest Territories are legally bilingual. Interpreters are used to a considerable extent² and several ordinances provide for their use specifically³. Nevertheless the Jury Ordinance stipulates that jurors must know English to qualify⁴.
- (d) Conclusion.- Theoretically speaking, the Council and the courts of the Northwest Territories should be bilingual. In fact, they do not appear to be so and doubt may be cast on the legality of the ordinances

1. For the pertinent rules and practices of the House of Commons, cf. 13.05.
2. cf. 4.28 (f).
3. cf. 4.23 (g).
4. cf. 9.10 (f).

of the Council. Very little practical recognition is given to the French language which seems to be placed at the same level as any other foreign language.¹ Evidently the situation might be explained by the fact that out of a total population of 22,998, only 994 persons listed French as their mother tongue, which is exactly 4.32%.

13.17 Official status of languages in Nova Scotia.-

(a) Constitutional status.- We have concluded from the history of Acadia that the only language which ever had official status prior to Confederation was English.² The Province has no statute dealing with language as such.

(b) House of Assembly.- In a letter dated September 28, 1965 we were advised by Mr. C. L. Beazley, Clerk of the Executive Council of Nova Scotia, as follows:

"There is no specific reference to the use of a second language in the Nova Scotia Legislature. We have had periodically for many years the House addressed in the French language by a Member. This would normally be done at least once during the Session.

When the Hansard is published, an English translation is given. The reverse, however, is not done and a general French language version of the Debates is not published."

1. cf. 9.10 (f).

2. cf. 1.08.

Pursuant to further inquiries from the undersigned, Mr. Beazley, in a letter of October 6, 1965, was kind enough to furnish us with the following additional information:

"I have your letter of September 29th and I am sorry if I indicated to you in my earlier letter that there was only one French speaking Member in the Nova Scotia Legislature, or that only one Member might speak in French during a Session. I shall attempt to deal with the questions asked in your letter as best I can, considering the misunderstanding that already exists:

1. The following Members of the Nova Scotia Legislature are wholly bi-lingual: Honourable G. J. Doucet, Dr. H. J. Pothier, Honourable G. A. Burrridge. There are some other Members who have a reasonable familiarity with French and could, if the occasion arose, address the House in that language and could understand French speech by another Member.

2. I think there have always been one or more Members of the Legislature who are of French extraction and many, if not most of them, would on some occasion address the House in French.

3. On no occasion that I know of has a Member addressed the House in French for the want of adequate English, so I suppose it would be true to say that it was a symbolic gesture.

4. There is no particular point in a Session where the House would be addressed in French. It might be done in the Address in Reply to the Speech from the Throne or it might be done on a motion to go into Supply.

5. The person who does the English translation of a speech would vary from year to year.

6. There is no appreciable delay in the publication of an issue of Hansard because of a French address.

7. It is difficult to answer this question which is categorical. The House has been addressed in French by a French speaking Member for many years; or a Member addresses the House partially in English and partially in French during the same subject.¹

8. The answer, I suppose, has to be "yes". The translation is done at the convenience of the Members of the House who do not speak French and would otherwise not know the content of the Member's speech.²

9. I do not know of any attempt ever having been made to make French the official language of debate and record."

The Honourable G. A. Burrridge, to whom we wrote on October 19, 1965 advised us that although his mother tongue was French, he had never addressed the Legislature in French, not even partially and that, to his knowledge, there had never been any attempt in Nova Scotia to make French an official language of debate or of record in the Legislature.

On November 25, 1965, Mr. G. J. Doucet replied as follows to our inquiry:

"5. I have addressed the House in French in 1964 and 1965.

6. My speeches are mostly in English.

7. I addressed the House in French to illustrate

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1. The question in our letter of September 29, 1965 was: "Is the member permitted to speak in French, as a matter of courtesy or a matter of right?"
 2. The question in our said letter was: "Is the translation of his speeches done primarily for the convenience of the English-speaking members of the House?"

the use of the French language.

8. There was no opposition.

9. I consider it a matter of courtesy that I have been permitted to address the House in French."

Mr. Doucet also stated that there had been no attempt, to his knowledge at any rate, to make French an official language.

Our general questionnaire to members of the Legislature confirmed that English was considered to be the only official language, by custom and usage, rather than by statute; that French was spoken sometimes (the amount of French being used being estimated at 1% or 2%); that there had been no perceptible increase in its use; that any French speeches would be reported in French with an English translation. Since there are no French reporters, any member wishing to speak in French provides Hansard with a written copy which is printed.

(c) Courts.- The courts of Nova Scotia do not fall under s. 133 of the B.N.A. Act¹. Some reference is made to interpreters in Nova Scotia legislation², but Acadians

1. cf. 4.20.

2. cf. 4.23 (j).

who desire to testify through interpreters meet with judicial hostility¹.

- (d) Conclusion.- English is obviously the only language enjoying official status in Nova Scotia. Out of a total population of 737,007, only 39,568 claim French as their mother tongue. But we saw² that the Acadian population is sufficiently concentrated in two counties to make the introduction therein of bilingual justice and bilingual local administration conceivable. At the present time, the only official recognition given to the French language is the granting of the odd French corporate names³.

1. cf. 4.28 (g).

2. In 4.40.

3. cf. 10.03 (e).

13.18 Official status of languages in Ontario.-

(a) Constitutional position.- Although at one time some measure of recognition was given to French in Upper Canada¹, English appears since Confederation to have been taken as the official language of the Province.

(b) Legislative Assembly.- The Rules of the Legislative Assembly of Ontario² contain the usual reference to the rules of the House of Commons, but that of the United Kingdom³. There is nothing specifically on language. Alex C. Lewis, formerly Clerk of the Legislative Assembly, stated:

"A member must address the House in English only ..."⁴

On September 29, 1965, Mr. Roderick Lewis, Q.C., present Clerk of the Legislative Assembly, forwarded to us the following Memorandum:

"MEMORANDUM RE RULE THAT ENGLISH ONLY MAY BE SPOKEN IN THE LEGISLATURE"

The statement in Lewis' Parliamentary Procedure in Ontario, page 83, 'A Member must address the House in English', is actually a quotation from May's Parliamentary Practice. In the current edition -- the 16th, this statement is to be found on page 444 and the citation given is Parl. Deb. (1901) 89, c. 546. The reference is to a ruling by the Rt. Hon. W. C. Gully, Speaker of

1. cf. 3.03 and 4.11.

2. found in Parliamentary Procedure in Ontario, by Alex C. Lewis, Clerk of the Legislative Assembly of Ontario, Toronto, Queen's Printer, 1940, pp. 103 et seq.

3. s. 1 (b) (2).

4. op. cit., p. 83.

the House of Commons, on the 19th of February, 1901. In rising to speak on the Throne Debate, Mr. O'Donnell, Member for Kerry W., attempted to address the House in Irish and Mr. Speaker stated the Rule of the House to be that Members must address the House in the English language only.

The Ontario Rules make no specific provision of this nature for very good reason; firstly, the English Rule above-stated applies; secondly, Section 133 of the B.N.A. Act expressly authorizes the use of the French language in addition to English in the Houses of Parliament of Canada and the Houses of the Legislature of Quebec. I submit, that, by inference, this restricts the Legislatures of the other Provinces to the use of English.

Roderick Lewis, Q.C.
Clerk, Legislative Assembly"

The replies to our questionnaire bore out the view that English is considered as the sole official language in Ontario; that all debates are exclusively in English and that French is never used although there appears to have been some limited demand that French be permitted. One respondent stated that very rarely (less than 1% of the time) some member would make a small part of a speech in French:

"A bilingual member will sometimes speak a paragraph or two in French in the two major debates, in which case the part as spoken is so reported in Hansard."

(c) Courts of Ontario.- The courts of the Province are not governed by s. 133 of the B.N.A. Act¹. In fact, the Adjudicature Act² provides specifically that:

"Writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other processes, or technical words, may be in the same language as has been commonly used."

Nevertheless, we found³ that it is not unusual for cases in lower jurisdictions to be conducted entirely in French when all the parties and the magistrate are French-speaking, which happens in those judicial districts where there is a heavy concentration of French-Canadians. In fact, the distribution of population in some counties is such that it renders conceivable the creation of bilingual judicial and administrative districts.⁴ It should also be noted that Ontario law recognizes very explicitly the right to interpreters⁵. Mixed juries, which had at one time existed in the Province, were abolished in 1791⁶.

1. cf. 4.20.

2. 1960, R.S.O., c. 197, s. 124.

3. cf. 4.28 (h).

4. cf. 4.40.

5. cf. 4.23 (1).

6. cf. 5.06.

(d) The administration of public affairs.- In the conduct of official business, English seems to be the only language enjoying recognition. The School Administration Act¹ provides that:

"It is the duty of a teacher,

(e) to use the English language in instructions and in all communications with the pupils in regard to discipline and management of the school, except where it is impracticable to do so by reason of the pupil not understanding English, but recitations requiring the use of a text book may be conducted in the language of the text book."

When Ontario law provides for signs or notices to be erected or given, they must be in English². Foremen and supervisory personnel in mines are required to understand English³. On the other hand an indirect and passing recognition of French is found in some statutes dealing with education⁴ and in French corporate names⁵.

1. 1960, R.S.O., c. 361, s. 22 (1).

2. cf. 9.07 (c), footnote 3. (c).

3. cf. 9.10 (g).

4. cf. 9.10 (g).

5. cf. 10.03 (f).

- (e) Conclusion.- It is obvious that despite its sizeable French minority (425,302 persons giving French as their mother tongue out of a total of 6,236,092) Ontario recognizes only English as an official language.

13.19 Official status of languages in Prince Edward Island.-

(a) Constitutional position.- There are no provisions dealing with language in any statute affecting Prince Edward Island.

(b) Legislative Assembly.- The Rules of the Legislative Assembly¹ contain the usual reference to the orders and customs of the House of Commons of Canada². The replies to our questionnaire confirmed, however, that English is considered the sole official language by custom and usage and that French is never used nor is there any demand for its use. One member stated:

"I have been in the Legislature of this province for twenty-five years and have heard French spoken on two occasions. We have but two members of Acadian descent in our House. One speaks French quite fluently and the other speaks French very badly. If we were to have another language in our Legislature it would be Gaelic. We have more members who speak Gaelic than members who speak French. Seventeen of our thirty members in the present House are descendants from four fathers who came from the highlands of Scotland."

Mr. Wendall MacKay, Clerk of the Legislative Assembly, has commented:

"Bilingual members are very rare in Prince Edward Island. Occasionally a bilingual member of Acadian descent will speak very briefly in French 'to honour the mother tongue' but to be understood by the majority

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1. Rules of the Legislative Assembly of Prince Edward Island, adopted March 24, 1964, available in a printed booklet which bears no indication of place or date of issue.
 2. s. 1.

of the House, a Member must speak in English. No simultaneous translation is provided in the Prince Edward Island Legislative Assembly. Records of the House will print in French that portion of a Member's address spoken in French. A bracketed translation into English is also printed."

French is used less than 1% of the time. It should be recalled that the 1961 census shows that only 7,958 people out of a total population of 104,629 claim French as their mother tongue (i.e. 7.6%).

(c) Courts.- Section 133 of the B.N.A. Act does not apply to the courts of this Province.¹ There does not appear to be any statutory provisions dealing with interpreters² but interpreters are used when needed³

(d) Conclusion.- Obviously the only language enjoying official status in Prince Edward Island is English, by custom rather than by statute.

1. cf. 4.20.

2. cf. 4.23 (j).

3. cf. 4.28 (i).

13.20 Official status of languages in the Province of Quebec.-

(a) Constitutional background.- The only province directly mentioned in s. 133 of the B.N.A. Act is Quebec. Consequently, in the Quebec Legislature either French or English may be used in debates and both those languages must be used in its records and journals as well as in the printing of Quebec statutes. French or English are also allowed in any court of the Province. The precise scope of these provisions has been shown to be very narrow¹. Furthermore, the possibility has been raised that Quebec can abrogate s. 133 unilaterally².

(b) The Quebec Legislature.- The constitutional requirement that the debates and records of the Legislature be bilingual has been given effect in the Rules and Standing Orders of the Legislative Assembly³. In addition to the usual reference to the rules and practices of the House of Commons of Canada⁴, which in the case of the Quebec Legislature, unlike that of the other provinces, could be pertinent, there are some special rules to which we would like to draw attention.

1. cf. 2.02.

2. cf. 2.06.

3. Règlements Annotés de l'Assemblée Législative, by L.P. Geoffrion, clerk, Quebec, 1941, in which the French part is followed by the English translation.

4. Rule 1 (6) and 2 (5). For these rules of the House of Commons, cf. 13.05.

1) Debate and records.- For instance, Rule 132 states:

"After each sitting day, the clerk shall cause a short record of the votes and proceedings of the house to be prepared and printed in the French and English languages ..."

Rule 134 states:

"The clerk shall cause a complete record of the votes and proceedings of the house to be prepared in the form of a journal and, the session being closed, to be printed and distributed in the French and English languages ..."

Notice of motions shall be given in writing in the French or English language¹. Every motion may be submitted in the French or English languages².

Rule 272 says:

"Every member who has been called upon to speak may as he pleases, use the French or the English language."

Rule 294 states:

"Any member present while a motion has been read or stated in either language, may require that it be read or stated again in the other language."

Special committees are governed by the same rules as committees whole House, mutatis mutandis³.

Reports of special committees shall be drafted in both languages⁴. All petitions to the

-
1. Rule 142 (1).
 2. Rule 146 (2).
 3. Rule 422.
 4. Rule 452.

Legislature shall be either in French or English and be accompanied by a certified translation in the other language¹.

ii) Private and public bills.- Careful provisions are also made with respect to the printing of bills.

Rule 535 declares:

"1. Every bill shall be printed and distributed in the French and English languages before being proposed to be read a second time, and all proposed resolutions relating to bills and referred to a committee of the whole house shall be printed and distributed in the French and English languages before being examined in such committee.

2. After allowing the second reading of the bill to be debated or the proposed resolutions to be examined in committee, it shall not be permissible to object that the bill or the proposed resolutions have been printed in one language only."

Rule 560 decrees:

"Subject to the restrictions as set forth in paragraph 2 of rule 561, after the second reading of any public bill, the house shall forthwith resolve itself into committee for the consideration of the bill, unless the bill is moved to be referred to a select committee, or notice of any instruction to be proposed thereon has been given, or the bill has been ordered by the house to be reprinted and it has not yet been reprinted and distributed in the French and English languages."

Similar provisions are found with respect to private

1. Rule 491.

bills. Rule 602 states:

"1. Two copies of the bill in the French or English language, with, endorsed thereon, the name of the member who shall take charge of the bill, shall be deposited with the clerk of the committee on private bills, at least three weeks before the opening day of the session.

2. There shall also be, at the same time, deposited with the accountant of the Legislative Assembly a sum sufficient to pay for translating the bill, for its printing in French and in English, and for correcting and revising the printing; such translation to be done, in all cases, by the officers of the house and the printing by the government contractor."

Every petition for the introduction of a private bill must be previously advertised by public notice¹ in connection with which Rule 611 is as follows:

"1. Every notice shall be published in the Quebec Official Gazette in the French and English languages, and in a French newspaper in the French, and in an English newspaper in the English language, in the judicial district comprising the locality to be affected or in the judicial district where the majority of the parties interested reside.

2. If there is no French or English newspaper in the judicial district where a notice is required to be advertised, such notice shall be published in a French or an English newspaper, as the case may be, in the nearest judicial district."

Rule 652 (1) is also pertinent:

"In addition to the sums and fees payable under rules 602 and 603, the promoters of

1. Rule 608.

any private bill shall, immediately after the second reading of such bill, deposit with the accountant of the Legislative Assembly a sum sufficient to pay the cost of printing the proposed act in the Statutes book of the session."

From the foregoing it is evident that the Quebec Legislature has even been more careful than the federal Parliament to ensure complete bilingualism of all its proceedings.

In our examination of the Quebec legislative process¹ we noted the various provisions in the Interpretation Act, the Civil Code and in laws dealing with the Revised Statutes providing specifically for bilingual publication of all Quebec statutes.

(c) Subordinate legislation.- As in the case of federal subordinate legislation, we have concluded² that there is no constitutional requirement that Quebec subordinate legislation or administrative law be bilingual. Our study³ disclosed that the most important regulations issued by Quebec administrative bodies are bilingual, but this practice is not based on any constitutional - or for that matter, statutory - obligation.

1. cf. 3.14-16.

2. In 2.02.

3. cf. 3.32 to 3.40.

- (d) Courts of Quebec.- Section 133 of the B.N.A. Act allows the use of either French or English in any court of the Province. We have defined in 4.18 what is meant by the terms "the courts of Quebec". Procedure in Quebec courts is entirely bilingual. The Code of Civil Procedure provides specifically for interpreters¹ and despite the usual practical difficulties, interpreters are used fairly widely². Furthermore, in addition to the mixed juries or juries in the accused's language provided for by the Criminal Code³, Quebec has extensive provisions for civil juries composed according to the language of the parties⁴.
- (e) Quasi-judicial boards and commissions.- As we noted earlier⁵, s. 133 of the B.N.A. Act cannot be deemed to apply to quasi-judicial functions of administrative boards and commissions. In our special study of Quebec quasi-judicial boards and commissions⁶ we established that although more than 80% of all proceedings before these quasi-judicial entities are conducted in French, a sufficient proportion is presented in English to indicate that these boards are bilingual

1. cf. 4.23 (k).

2. cf. 4.28 (j).

3. cf. 5.11 et seq.

4. cf. 5.17 et seq.

5. cf. 13.08. See also: 7.02.

6. cf. chapter VII.

in fact if not in law. The personnel of these tribunals is practically entirely bilingual¹.

(f) Municipal affairs.- Unless specifically excepted, the proceedings of a municipal council, the publication of notices and by-laws, and all public notices are required to be bilingual². This requirement is not necessarily respected in practice by individual municipalities³. We also suggested that the legal requirement of official bilingualism might not be realistic⁴.

(g) The administration of public affairs.- In general Quebec law provides for a large measure of bilingualism, or a choice between French and English, in large areas of public administration: public notices⁵, signs, labels and notice boards⁶, official forms⁷, ballot forms⁸. When linguistic qualifications are imposed as a condition of employment in any official private capacity, French and English are generally treated as equals, the requirement of bilingualism itself being practically non-existent⁹. Quebec law also

1. cf. 7.03 (b).

2. cf. 8.03.

3. cf. 8.04 (b).

4. cf. 8.24.

5. cf. 9.05.

6. cf. 9.07 (b).

7. cf. 9.08 (f).

8. cf. 9.09.

9. cf. 9.10 (h) and 9.11 (c).

requires documents issued by carriers to be bilingual¹
and stipulates that any party to a labour contract
may demand that it be drawn up in both languages².
Corporations may be chartered in either language or
in both and can keep their by-laws and make their
returns in the language of their choice³. The musical
literary and scientific competitions sponsored by
the Province either provide for English categories or
allow participants to do so in either language⁴.

(h) Conclusion.- It is evident that of all Canadian
jurisdictions, including the federal government,
Quebec has given the widest official status to both
languages and treats English, at least from a legal
point of view, as being equal with French.

1. cf. 9.12 (b).

2. id..

3. cf. 10.03 (g).

4. cf. Règlements des Concours Littéraires et Scientifiques du Québec (1964) en vertu de la Loi de 1962 S.Q., c. 24, 1964 Q.O.G., Vol. 96, p. 1326, s. 11; and Règlements concernant les Concours du Prix d'Europe, Order-in-council No. 1490, 1962 Q.O.G., Vol. 94, p. 4804, ss. 6 and 20.

13.21 Official status of languages in Saskatchewan.-

(a) Constitutional background.- Our remarks in connection with the situation in Alberta¹ apply equally to Saskatchewan. French may still be an official language of the Legislative Assembly of Saskatchewan and in the courts of that Province. Naturally, the question is somewhat academic since the population of that Province, which numbers 925,181, only numbers 36,163 persons giving French as their mother tongue (or 3.9%). This proportion is much smaller than that of citizens whose mother tongue is German (9.68%) or Ukrainian (7.25%). In any case, Saskatchewan has no specific language legislation.

(b) Saskatchewan Legislative Assembly.- Standing Order No. 1 contains the usual reference to the orders, usages and customs of the House of Commons². The only apparently pertinent provision is Standing Order 82 which requires publication of a notice of all petitions for private bills to be made in the Saskatchewan Gazette and in four consecutive issues of a newspaper "published in English". Our questionnaire to members of the Assembly elicited that to all intents and purposes English is the

1. cf. 13.11 (a).

2. Standing Orders of the Legislative Assembly of Saskatchewan, Queen's Printer, Saskatoon, 1957.

only language used except for an infinitesimal use of French, and sometimes Ukrainian, on special occasions.

One member said:

"English is invariably regarded as the language of the legislature. Some years ago a member gave a brief speech in French on a traditional occasion. More recently several Ukrainian members have spoken in their language on such occasions. Otherwise all proceedings are in English."

It was stated that any such French or Ukrainian statements would only appear in translation in the official records of debate. One member said he had heard only one French speech in 10 years in the Assembly. Our respondents treated English as the sole official language on the basis of custom and usage rather than statutory authority. One member described the amount of French used as "microscopic".

(c) Courts of Saskatchewan.- Subject to the reservation indicated in sub-paragraph (a) of the present section, the courts of Saskatchewan are not governed by s. 133¹ of the B.N.A. Act. Although there was some indication that French was sometimes used in the lower courts, English, to all intents and purposes, is the official language². Some provisions are made for the right to

1. cf. 4.20.

2. cf. 4.28 (k).

interpreters in court proceedings¹.

(d) The administration of public affairs.- Although Saskatchewan statutes do not deal specifically with the question of language, they seem to imply that English is the only language in which required notices can be given². English is also a prerequisite for election or appointment to offices in the educational system³.

(e) Conclusion.- English is the only language which enjoys official status in this Province.

1. cf. 4.23 (1).

2. cf. 9.06 and 9.07 (c).

3. cf. 9.10 (i).

13.22 Official status of languages in the Yukon.-

(a) Constitutional background.- We came to the conclusion¹ that as in the Northwest Territories, French must still be deemed an official language of the Legislative Council of the Yukon Territory and of its courts. On the other hand, there can be little demand for French in an area which according to the 1961 census had only 443 inhabitants (or 3.02% of the total) stating that French was their mother tongue.

(b) Legislative Council of the Yukon.- The mimeographed Standing Orders and Rules of the Legislative Council of the Yukon Territory contain no references to language other than the usual reference in Standing Order No. 1 to the usages, orders and customs of the House of Commons. Mr. C. P. Hughes, Senior Advisory Council to the Government of the Yukon Territory, wrote us on October 14, 1965 as follows:

"I have not seen the enclosures which you state accompanied your letter but if I may conjecture regarding its contents I would advise you that there does not seem to be any need for bilingual publication in the Yukon. We would also have considerable difficulty in typing and transcribing into the French language if our legislation and regulations had to be cast in both languages.

1. In. 1.159.

Speaking as a practical man and giving it a business man's assessment, I would say that the additional expense of preparing documents for exclusive use in the Yukon in both languages would be unwarranted. So far as I am aware there are no monoglot French in the Yukon and if bilingualism had to be stressed the emphasis should be laid in favour of monoglot Indians who do form a sizeable proportion of our population."

- (c) Courts.- Both for the reasons referred to in sub-paragraph (a) of the present section, and because, being created by the federal Parliament, they must be deemed to fall within the ambit of s. 133 of the B.N.A. Act¹, we conclude that French may be used in the courts of the Yukon, no matter how infinitesimal the actual demand for it might be in practice. Facilities for interpreters exist, however.²
- (d) Conclusion.- In practice, English is treated as the only official language in the Yukon³, but we believe that a strong constitutional argument can be made for the recognition of French, alongside English, as a language which may be used in the Legislative Council and in the courts of the Territory. Indeed, because a French version was not adopted and published, we suggest that there may be some doubt as to the technical

1. cf. 4.17 (g).
2. cf. 4.23 (m), and 4.28 (1).
3. cf. 10.03 (i).

validity of Yukon Ordinances.

D - GENERAL CONCLUSIONS

13.23 The official status of French and English throughout
Canada.-

We can thus conclude that from a legal (as distinguished from a practical) point of view, there are only two jurisdictions in which there is no doubt that both languages enjoy equal official status: the federal one and Quebec. Academically, an argument can be made for official bilingualism in the Northwest Territories and in the Yukon. In all other provinces, despite some technical reservations about Alberta and Saskatchewan, and a limited measure of recognition of French in New Brunswick, English is the only official language. In most jurisdictions, ~~this~~ situation only reflects the distribution of population. But, as we pointed out in 4.40, it calls for some reservations in provinces such as Nova Scotia, Ontario, and Manitoba which have substantial concentrations of citizens whose mother tongue is French. Furthermore, and notwithstanding any historical or constitutional argumentation to the contrary, it just does not make sense that New Brunswick, 35.2% of whose population is French-speaking, be unilingually English while Quebec, whose English population is only 13.26% and heavily concentrated on the Island of Montreal, is totally bilingual.

A N N E X X I I I - A .

August 13, 1965

Mr. Ronald Williams
Legal Adviser
Department of Citizenship and
Immigration
Citizenship Building
Ottawa, Ontario

Dear Mr. Williams,

I am under contract with the Royal Commission on Bilingualism and Biculturalism to do research on the legal status of the English and French languages in Canada.

Section 10 (1) (e) of the Canadian Citizenship Act, R.S.C. 1952, c. 33, reads:

"The Minister may, in his discretion, grant a certificate of citizenship to any person who is not a Canadian citizen and who makes application for that purpose and satisfies the Court that ...

(e) he has an adequate knowledge of either the English or the French language, or, if he has not such an adequate knowledge, he has resided continuously in Canada for more than twenty years."

In view of the above I am interested in finding out what interpretation your Department places on the words "adequate knowledge".

I would be very grateful for your assistance in this matter.

Yours truly,

CLAUDE-ARMAND SHEPPARD

/lmd

DEPARTMENT OF CITIZENSHIP AND
IMMIGRATION
Legal Division

MINISTÈRE DE LA CITOYENNETÉ ET DE
L'IMMIGRATION

Our file no. 2-15-2

OTTAWA 2, August 26, 1965.

Mr. Claude-Armand Sheppard,
Shapiro, Robinson, Sheppard & Drymer,
Suite 612 Place Victoria,
800 Victoria Square,
MONTREAL 1, P.Q.

Dear Sir:

I have your letter of August 13 last inquiring as to the interpretation this Department places on the words "adequate knowledge" as used in s. 10 (1) (e) of the Canadian Citizenship Act.

In my opinion, having regard to the wording of this section, the question of whether an applicant for Canadian citizenship possesses "adequate knowledge" of the French or English language is a matter to be determined by the court that is entertaining the application. In this connection you will note the use of the words "satisfies the court" in that section. The word "court" is defined in s. 2 (h) of the Act to mean any superior, circuit, county or district court, and includes in the Province of Quebec, any district magistrate, and any court or person designated under s. 34 (2) to act as a court for the purposes of the Act.

I have discussed your letter with the Deputy Registrar of Canadian Citizenship and it is my understanding that the Department takes the position that the expression "adequate knowledge" should be interpreted to mean that the knowledge of the language ought to be adequate to the needs of the applicant in the normal course of his life but that lack of any knowledge of a language could not amount to an adequate knowledge. In other words, the Department is of the view that the applicant should have some knowledge of the English or French language with the degree of facility and fluency required, depending upon such factors as the age, sex, education, and occupation of the particular applicant.

If I can be of any further assistance to you in this matter, please do not hesitate to write me again.

Yours truly,

(sgd.) R. E. WILLIAMS
R. E. Williams,
Legal Adviser.

September 25, 1965

Mr. R. E. Williams,
Legal Adviser,
Department of Citizenship and Immigration,
Ottawa, Ontario.

Your File No. 2-15-2

Dear Mr. Williams:

Thank you for your kind letter of August 26 last which we found very helpful indeed. We have since considered a number of points in the Citizenship Act upon which we would appreciate your comments.

Firstly, section 10 (1) provides that any person not a citizen must make application for that purpose. Section 10 (1) (e) requires such applicant to have an adequate knowledge of English or French or to have resided continuously in Canada for more than twenty years.

Accordingly, we would like to know the following:

1. Whether the application may be in any language whatever.
2. Whether it may be in French or English only.
3. Whether a French-speaking applicant may apply in his mother tongue in Manitoba and Ontario where English is the official language of the courts by statute.
4. Whether a French-speaking applicant can apply in his mother tongue in any other province outside Quebec.
5. Whether there is a standard application form
 - a) in separate English and French versions;
 - b) with both English and French versions combined on the same form.
6. Whether, if there are separate forms, they are available in both languages in all provinces of Canada.

September 25, 1965

Mr. R. E. Williams

7. If a French-speaking person applied before an English-speaking court,
a) would an interpreter or translator be used?
and b) who would bear the cost thereof.

8. How would a unilingual English judge determine the adequacy of an applicant's knowledge of the French language, and conversely, how would a unilingual French judge determine the adequacy of an applicant's knowledge of the English language?

Secondly, we would be grateful for your comments on points 1 to 7 above, as applied to the various declarations required by the Act.

Thirdly, are the forms for certificates of citizenship in separate English and French versions, or are the English and French versions combined?

Fourthly, in the Second Schedule to the Act the form for the Oath for Allegiance is set out. The French version of the Act gives the form of Oath in French. Therefore can a French-speaking applicant take the oath in his own language in a province other than Quebec and can an English-speaking applicant at all times take the oath in English in Quebec? If an interpreter is necessary for purposes of the oath, who bears the cost?

If you could provide answers to these questions at your earliest convenience, we should be very grateful. We have consulted the Office Consolidation of Regulations under the Citizenship Act, and could find nothing touching on language usage.

Thanking you in anticipation of your continued generous co-operation, I am

Yours truly,

CLAUDE-ARMAND SHEPPARD

/uh

DEPARTMENT OF CITIZENSHIP AND
IMMIGRATION
Legal Division

MINISTERE DE LA CITOYENNETE ET DE
L'IMMIGRATION

Ottawa 2, October 26, 1965.

Me Claude-Armand Sheppard,
Suite 612, Place Victoria,
800 Victoria Square,
Montreal 1, P.Q.

Dear Mr. Sheppard,

I beg to acknowledge receipt of your letters of September 25th and October 25th, and express my regrets for the delay in providing you with this reply.

I have taken up the matters you raised in your first letter with the Citizenship Registration Branch of this department, and if I may deal seriatim with your questions, the replies appear to be as follows:

First -

1. The Act does not restrict the completion of an application under section 10, subsection (1) to any particular language, so conceivably an application could be completed in any language. However, from the practical point of view, the processing of an application completed in a language other than English or French would probably suffer as a result of the constant need for translation.

It should be noted that Citizenship Regulation (4) directs a Clerk of a Court to assist an applicant complete the application form. This Regulation was intended to make it unnecessary for applications to be filed in a language other than English or French.

2. See No. 1.
3. A French speaking applicant may apply for Canadian citizenship in his mother tongue in any Court handling citizenship matters, whether in the Province of Quebec, Ontario, Manitoba or any other Province.
4. See No. 3.
5. The application form is standard and English and French are combined on the same form.
6. See No. 5.

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7. A French speaking applicant whose application was being processed by an English speaking Court would normally be requested to provide an interpreter -- (An official interpreter is not usually required, but the discretion here rests with the Court). Any costs involved are borne by the applicant, providing the Court did not have the services of an interpreter.
8. There is no set test that Judges are required to apply to determine the adequacy of an applicant's knowledge of the English or French language. This is left up to the Judge in question to determine. As a practical matter, most of the Judges that have been appointed as such under the Act have at least some knowledge of French and it has apparently never been felt to be a problem by any of them to determine the adequacy of an applicant's knowledge of one language or the other. As to the County and District Court Judges, of course, we have no knowledge of the extent of their understanding of both languages, and it is expected that a French applicant who appeared before a unilingual English Judge would provide his own interpreter, at his own cost, if he could not get along in English. If there were any serious doubt whether the interpreter was adequately translating the language of the Judge into that of the applicant and vice-versa, it is probable that the Court would supply its own interpreter, and at the cost of the Citizenship Registration Branch. This problem has never, in the memory of any of our officials, arisen.

I am advised as a matter of interest, that citizenship was once granted to a deaf mute who was able to communicate with the Court through his wife by means of sign language. Here I suppose, there might have been a question whether the sign language demonstrated an adequate knowledge of English or French, but the Judge was able to carry on a very considerable conversation with the man, through his wife, and satisfied himself that he was well able to communicate, given the nature of his affliction, and he did recommend a grant of citizenship to that person.

Secondly -

All other declarations or applications, apart from those required by Section 10, subsection (1) of the Act are handled directly by the Department. While the forms are standard and in English or French combined or in separate English and French forms, any declaration could be completed in either English or French or in any other language. The necessary translation would be provided by the Registrar where such was necessary. In practice many of these declarations, etc. are received from persons residing outside of Canada and are completed in many different languages.

Thirdly

Certificates of Canadian citizenship have both English and

French versions combined on one form.

Fourthly -

If in the opinion of the Court an interpreter were necessary in order that the Oath of Allegiance could be administered either in English or French, the applicant would be requested to provide the interpreter where such was not already available to the Court. In the result, a French speaking person is able to take the Oath of Allegiance in French any place in Canada, and an English speaking person is able to take it in English any place in Canada, including Quebec. Actually, the Oath of Allegiance presents less difficulty than an interview because the Judge has the set form of the Oath in both languages before him, and can usually follow along well enough, even without an interpreter, at least in so far as recognizing the words that have been spoken.

In conclusion, we agree that you are quite right that neither the Act nor the Regulations have anything to say about the use of any language for the purposes you have raised.

Yours very truly,

(sgd.) R. E. Williams
R. E. Williams
Legal Adviser

